PATENT LAWS

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U.S. DEPARTMENT OF COMMERCE

PATENT OFFICE

PATENT LAWS

U.S. DEPARTMENT OF COMMERCE
John T. Connor, Secretary

PATENT OFFICE
Edward J. Brenner, Commissioner

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THE CONSTITUTIONAL PROVISION

ART. 1, SEC. 8. The Congress shall have power . . . To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

UNITED STATES CODE

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Chapter 1—Establishment, Officers, Functions

Sec.

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§ 1. Establishment

The Patent Office shall continue as an office in the Department of Commerce, where records, books, drawings, specifications, and other papers and things pertaining to patents and to trade-mark registrations shall be kept and preserved, except as otherwise provided by law.

Notes.—Section 1 of the Patent Act of July 19, 1952 (Public Law 593, 82d Cong., 2d sess., ch. 950; 66 Stat. 792), the new patent law, enacts Title 35 of the United States Code, which is reprinted herein, with subsequent amendments. The enacting clause of the Act states that the new patent code may be cited, "Title 35, United States Code, section —". A short citation could be 35 U. S. C. —.

Section 4 (a) of the Act provides:

"This Act shall take effect on January 1, 1953 and shall apply to all applications for patent filed on or after such date and to all patents granted

on such applications. It shall apply to further proceedings on applications pending on such date and to patents granted on such applications except as otherwise provided. It shall apply to unexpired patents granted prior to such date except as otherwise provided."

Specific provisions with respect to the time of taking effect are noted under the appropriate section of Title 35.

Section 3 of the Act provides:

"If any provision of Title 35, as enacted by section 1 hereof, is declared unconstitutional or is held invalid, the validity of the remainder of this title shall not be affected."

Section 4 (e) of the Act provides:

"Nothing contained in Title 35, as enacted by section 1 hereof, shall operate to nullify any judicial finding prior to the effective date of this Act on the validity of any patent by a court of competent jurisdiction."

Section 5 of the Act repeals the sections of prior statutes set out in a schedule of statutes repealed and provides.

"Any rights or liabilities now existing under such sections or parts thereof shall not be affected by this repeal."

§ 2. Seal

The Patent Office shall have a seal with which letters patent, certificates of trade-mark registrations, and papers issued from the Office shall be authenticated.

§ 3. Officers and employees

A Commissioner of Patents, one first assistant commissioner, two assistant commissioners, and not more than fifteen examiners-in-chief, shall be appointed by the President, by and with the advice and consent of the Senate. The assistant commissioners shall perform the duties pertaining to the office of commissioner assigned to them by the Commissioner. The first assistant commissioner, or, in the event of a vacancy in that office, the assistant commissioner senior in date of appointment, shall fill the office of Commissioner during a vacancy in that office until a Commissioner is appointed and takes office. The Secretary of Commerce, upon the nomination of the Commissioner in accordance with law, shall appoint all other officers and employees.

The Secretary of Commerce may vest in himself the functions of the Patent Office and its officers and employees specified in this title and may from time to time authorize their performance by any other officer or employee. The Secretary of Commerce is authorized to fix the per annum rate of basic

compensation of each examiner-in-chief in the Patent Office at not in excess of the maximum scheduled rate provided for positions in grade 17 of the General Schedule of the Classification Act of 1949, as amended. (Amended September 6, 1958, Public Law 85–933, sec. 1, 72 Stat. 1793; September 23, 1959, Public Law 86–370, sec. 1(a), 73 Stat. 650; and August 14, 1964, Public Law 88–426, sec. 305(26), 78 Stat. 425.)

§ 4. Restrictions on officers and employees as to interest in patents

Officers and employees of the Patent Office shall be incapable, during the period of their appointments and for one year thereafter, of applying for a patent and of acquiring, directly or indirectly, except by inheritance or bequest, any patent or any right or interest in any patent, issued or to be issued by the Office. In patents applied for thereafter they shall not be entitled to any priority date earlier than one year after the termination of their appointment.

Note.—Section 4 (g) of the Act of July 19, 1952 provides:

"The period of one year specified in section 4 of Title 35 as enacted by section 1 hereof shall not apply in the case of applications filed before the effective date of this Act."

§ 5. Bond of Commissioner and other officers

The Commissioner and such other officers as he designates, before entering upon their duties, shall severally give bond, with sureties, the former in the sum of $10,000, and the latter in sums prescribed by the Commissioner, conditioned for the faithful discharge of their respective duties and that they shall render to the proper officers of the Treasury a true account of all money received by virtue of their offices.

§ 6. Duties of Commissioner

The Commissioner, under the direction of the Secretary of Commerce, shall superintend or perform all duties required by law respecting the granting and issuing of patents and the registration of trade-marks; and he shall have charge of property belonging to the Patent Office. He may, subject to the approval of the Secretary of Commerce, establish regulations, not inconsistent with law, for the conduct of proceedings in the Patent Office.

§ 7. Board of Appeals

The examiners-in-chief shall be persons of competent legal knowledge and scientific ability. The Commissioner, the assistant commissioners, and the examiners-in-chief shall constitute a Board of Appeals, which, on written appeal of the applicant, shall review adverse decisions of examiners upon applications for patents. Each appeal shall be heard by at least three members of the Board of Appeals, the members hearing such appeal to be designated by the Commissioner. The Board of Appeals has sole power to grant rehearings.

Whenever the Commissioner considers it necessary to maintain the work of the Board of Appeals current, he may designate any patent examiner of the primary examiner grade or higher, having the requisite ability, to serve as examiner-in-chief for periods not exeeding six months each. An examiner so designated shall be qualified to act as a member of the Board of Appeals. Not more than one such primary examiner shall be a member of the Board of Appeals hearing an appeal. The Secretary of Commerce is authorized to fix the per annum rate of basic compensation of each designated examiner-in-chief in the Patent Office at not in excess of the maximum scheduled rate provided for positions in grade 16 of the General Schedule of the Classification Act of 1949, as amended. The per annum rate of basic compensation of each designated examiner-in-chief shall be adjusted, at the close of the period for which he was designated to act as examiner-in-chief, to the per annum rate of basic compensation which he would have been receiving at the close of such period if such designation had not been made. (Amended Sept. 6, 1958, Public Law 85–933, sec. 1, 72 Stat. 1793; and, Sept. 23, 1959, Public Law 86–370, sec. 1(b), 73 Stat. 650.)

§ 8. Library

The Commissioner shall maintain a library of scientific and other works and periodicals, both foreign and domestic, in the Patent Office to aid the officers in the discharge of their duties.

§ 9. Classification of patents

The Commissioner may revise and maintain the classification by subject matter of United States letters patent, and such

other patents and printed publications as may be necessary or practicable, for the purpose of determining with readiness and accuracy the novelty of inventions for which applications for patent are filed.

§ 10. Certified copies of records

The Commissioner may furnish certified copies of specifications and drawings of patents issued by the Patent Office, and of other records available either to the public or to the person applying therefor.

§ 11. Publications

(a) The Commissioner may print, or cause to be printed, the following:

1. Patents, including specifications and drawings, together with copies of the same. The Patent Office may print the headings of the drawings for patents for the purpose of photolithography.

2. Certificates of trade-mark registrations, including statements and drawings, together with copies of the same.

3. The Official Gazette of the United States Patent Office.

4. Annual indexes of patents and patentees, and of trade-marks and registrants.

5. Annual volumes of decisions in patent and trade-mark cases.

6. Pamphlet copies of the patent laws and rules of practice, laws and rules relating to trade-marks, and circulars or other publications relating to the business of the Office.

(b) The Commissioner may exchange any of the publications specified in items 3, 4, 5, and 6 of subsection (a) of this section for publications desirable for the use of the Patent Office.

§ 12. Exchange of copies of patents with foreign countries

The Commissioner may exchange copies of specifications and drawings of United States patents for those of foreign countries.

§ 13. Copies of patents for public libraries

The Commissioner may supply printed copies of specifications and drawings of patents to public libraries in the United States which shall maintain such copies for the use of the

public, at the rate for each year's issue established for this purpose in section 41 (a) 9 of this title.

§ 14. Annual report to Congress

The Commissioner shall report to Congress annually the moneys received and expended, statistics concerning the work of the Office, and other information relating to the Office as may be useful to the Congress or the public.

Chapter 2—Proceedings in the Patent Office

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§ 21. Day for taking action falling on Saturday, Sunday, or holiday

When the day, or the last day, for taking any action or paying any fee in the United States Patent Office falls on Saturday, Sunday, or a holiday within the District of Columbia, the action may be taken, or the fee paid, on the next succeeding secular or business day.

§ 22. Printing of papers filed

The Commissioner may require papers filed in the Patent Office to be printed or typewritten.

§ 23. Testimony in Patent Office cases

The Commissioner may establish rules for taking affidavits and depositions required in cases in the Patent Office. Any officer authorized by law to take depositions to be used in the courts of the United States, or of the State where he resides, may take such affidavits and depositions.

§ 24. Subpoenas, witnesses

The clerk of any United States court for the district wherein testimony is to be taken for use in any contested case in the Patent Office, shall, upon the application of any party thereto, issue a subpoena for any witness residing or being within such district, commanding him to appear and testify before an officer in such district authorized to take depositions and affidavits,

at the time and place stated in the subpoena. The provisions of the Federal Rules of Civil Procedure relating to the attendance of witnesses and to the production of documents and things shall apply to contested cases in the Patent Office.

Every witness subpoenaed and in attendance shall be allowed the fees and traveling expenses allowed to witnesses attending the United States district courts.

A judge of a court whose clerk issued a subpoena may enforce obedience to the process or punish disobedience as in other like cases, on proof that a witness, served with such subpoena, neglected or refused to appear or to testify. No witness shall be deemed guilty of contempt for disobeying such subpoena unless his fees and traveling expenses in going to, and returning from, and one day's attendance at the place of examination, are paid or tendered him at the time of the service of the subpoena; nor for refusing to disclose any secret matter except upon appropriate order of the court which issued the subpoena.

§ 25. Declaration in lieu of oath

(a) The Commissioner may by rule prescribe that any document to be filed in the Patent Office and which is required by any law, rule, or other regulation to be under oath may be subscribed to by a written declaration in such form as the Commissioner may prescribe, such declaration to be in lieu of the oath otherwise required.

(b) Whenever such written declaration is used, the document must warn the declarant that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. 1001). (New section added March 26, 1964, Public Law 88–292, sec. 1, 78 Stat. 171.)

§ 26. Effect of defective execution

Any document to be filed in the Patent Office and which is required by any law, rule, or other regulation to be executed in a specified manner may be provisonally accepted by the Commissioner despite a defective execution, provided a properly executed document is submitted within such time as may be prescribed. (New section added March 26, 1964, Public Law 88–292, sec. 1, 78 Stat. 171.)

Chapter 3—Practice Before Patent Office

Sec.
31. Regulations for agents and attorneys.
32. Suspension or exclusion from practice.
33. Unauthorized representation as practitioner.

§ 31. Regulations for agents and attorneys

The Commissioner, subject to the approval of the Secretary of Commerce, may prescribe regulations governing the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Patent Office, and may require them, before being recognized as representatives of applicants or other persons, to show that they are of good moral character and reputation and are possessed of the necessary qualifications to render to applicants or other persons valuable service, advice, and assistance in the presentation or prosecution of their applications or other business before the Office.

§ 32. Suspension or exclusion from practice

The Commissioner may, after notice and opportunity for a hearing, suspend or exclude, either generally or in any particular case, from further practice before the Patent Office, any person, agent, or attorney shown to be incompetent or disreputable, or guilty of gross misconduct, or who does not comply with the regulations established under section 31 of this title, or who shall, by word, circular, letter, or advertising, with intent to defraud in any manner, deceive, mislead, or threaten any applicant or prospective applicant, or other person having immediate or prospective business before the Office. The reasons for any such suspension or exclusion shall be duly recorded. The United States District Court for the District of Columbia, under such conditions and upon such proceedings as it by its rules determines, may review the action of the Commissioner upon the petition of the person so refused recognition or so suspended or excluded.

§ 33. Unauthorized representation as practitioner

Whoever, not being recognized to practice before the Patent Office, holds himself out or permits himself to be held out as so recognized, or as being qualified to prepare or prosecute

applications for patent, shall be fined not more than $1,000 for each offense.

Chapter 4—Patent Fees

Sec.
41. Patent fees.
42. Payment of patent fees; return of excess amounts.

§ 41. Patent fees

(a) The Commissioner shall charge the following fees:

1. On filing each application for an original patent, except in design cases, $65; in addition, on filing or on presentation at any other time, $10 for each claim in independent form which is in excess of one, and $2 for each claim whether independent or dependent) which is in excess of ten. Errors in payment of the additional fees may be rectified in accordance with regulations of the Commissioner.

2. For issuing each original or reissue patent, except in design cases, $100; in addition, $10 for each page (or portion thereof) of specification as printed, and $2 for each sheet of drawing.

3. In design cases:

a. On filing each design application, $20.

b. On issuing each design patent: For three years and six months, $10; for seven years, $20; and for fourteen years, $30.

4. On filing each application for the reissue of a patent, $65; in addition, on filing or on presentation at any other time, $10 for each claim in independent form which is in excess of the number of independent claims of the original patent, and $2 for each claim (whether independent or dependent) which is in excess of ten and also in excess of the number of claims of the original patent. Errors in payment of the additional fees may be rectified in accordance with regulations of the Commissioner.

5. On filing each disclaimer, $15.

6. On appeal for the first time from the examiner to the Board of Appeals, $50; in addition, on filing a brief in support of the appeal, $50.

7. On filing each petition for the revival of an abandoned application for a patent or for the delayed payment of the fee for issuing each patent, $15.

8. For certificate under section 255 or under section 256 of this title, $15.

9. As available and if in print: For uncertified printed copies of specifications and drawings of patents (except design patents), 50 cents per copy; for design patents, 20 cents per copy; the Commissioner may establish a charge not to exceed $1 per copy for patents in excess of twenty-five pages of drawings and specifications and for plant patents printed in color; special rates for libraries specified in section 13 of this title, $50 for patents issued in one year. The Commissioner may, without charge, provide applicants with copies of specifications and drawings of patents when referred to in a notice under section 132.

10. For recording every assignment, agreement, or other paper relating to the property in a patent or application, $20; where the document relates to more than one patent or application, $3 for each additional item.

11. For each certificate, $1.

(b) The Commissioner may establish charges for copies of records, publications, or services furnished by the Patent Office, not specified above.

(c) The fees prescribed by or under this section shall apply to any other Government department or agency, or officer thereof, except that the Commissioner may waive the payment of any fee for services or materials in cases of occasional or incidental requests by a Government department or agency, or officer thereof. (Amended July 24, 1965, Public Law 89–83, secs. 1 and 2, 79 Stat. 259.)

Note.—Section 7 (a), (b), and (c) of the Act of July 24, 1965 reads as follows:

"(a) This Act shall take effect three months after its enactment. [October 25, 1965.]

"(b) Items 1, 3, and 4 of section 41(a) of title 35, United States Code, as amended by section 1 of this Act, do not apply in further proceedings in applications filed prior to the effective date of this Act.

"(c) Item 2 of section 41(a), as amended by section 1 of this Act, and section 4 of this Act [amending 35 U.S.C. 151] do not apply in cases in which the notice of allowance of the application was sent, or in which a patent issued, prior to the effective date; and, in such cases, the fee due is the fee specified in this title prior to the effective date of this Act."

§ 42. Payment of patent fees; return of excess amounts

All patent fees shall be paid to the Commissioner who shall deposit the same in the Treasury of the United States in such manner as the Secretary of the Treasury directs, and the Commissioner may refund any sum paid by mistake or in excess of the fee required by law.

PART II—PATENTABILITY OF INVENTIONS AND GRANT OF PATENTS

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103. Conditions for patentability; non-obvious subject matter.
104. Invention made abroad.

§ 100. Definitions

When used in this title unless the context otherwise indicates—

(a) The term "invention" means invention or discovery.

(b) The term "process" means process, art or method, and includes a new use of a known process, machine, manufacture, composition of matter, or material.

(c) The terms "United States" and "this country" mean the United States of America, its territories and possessions.

(d) The word "patentee" includes not only the patentee to whom the patent was issued but also the successors in title to the patentee.

§ 101. Inventions patentable

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new

and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

§ 102. Conditions for patentability; novelty and loss of right to patent

A person shall be entitled to a patent unless—

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States, or

(c) he has abandoned the invention, or

(d) the invention was first patented or caused to be patented by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application filed more than twelve months before the filing of the application in the United States, or

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or

(f) he did not himself invent the subject matter sought to be patented, or

(g) before the applicant's invention thereof the invention was made in this country by another who had not abandoned, suppressed, or concealed it. In determining priority of invention there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.

Notes—Section 4 (b) of the Act of July 19, 1952 provides:

"Section 102 (d) of Title 35, as enacted by section 1 hereof, shall not apply to existing patents and pending applications, but the law previously in effect, namely the first paragraph of R. S. 4887 (U. S. Code, title 35, sec. 32, first paragraph, 1946 ed.), shall apply to such patents and applications."

Section 4 (d) of the Act of July 19, 1952 provides:

"The period of one year specified in section 102 (b) of Title 35 as enacted

by section 1 hereof shall not apply in the case of applications filed before August 5, 1940, and patents granted on such applications, and with respect to such applications and patents, said period is two years instead of one year."

§ 103. Conditions for patentability; non-obvious subject matter

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

§ 104. Invention made abroad

In proceedings in the Patent Office and in the courts, an applicant for a patent, or a patentee, may not establish a date of invention by reference to knowledge or use thereof, or other activity with respect thereto, in a foreign country, except as provided in section 119 of this title. Where an invention was made by a person, civil or military, while domiciled in the United States and serving in a foreign country in connection with operations by or on behalf of the United States, he shall be entitled to the same rights of priority with respect to such invention as if the same had been made in the United States.

Chapter 11—Application for Patent

Sec.

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120. Benefit of earlier filing date in the United States.
121. Divisional applications.
122. Confidential status of applications.

§ 111. Application for patent

Application for patent shall be made by the inventor, except as otherwise provided in this title, in writing to the Commissioner. Such application shall include: (1) a specification as prescribed by section 112 of this title; (2) a drawing as prescribed by section 113 of this title; and (3) an oath by the applicant as prescribed by section 115 of this title. The application must be signed by the applicant and accompanied by the fee required by law.

§ 112. Specification

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention. A claim may be written in independent or dependent form, and if in dependent form, it shall be construed to include all the limitations of the claim incorporated by reference into the dependent claim.

An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof. (Amended July 24, 1965, Public Law 89–83, sec. 9, 79 Stat. 261.)

§ 113. Drawings

When the nature of the case admits, the applicant shall furnish a drawing.

§ 114. Models, specimens

The Commissioner may require the applicant to furnish a model of convenient size to exhibit advantageously the several parts of his invention.

When the invention relates to a composition of matter, the Commissioner may require the applicant to furnish specimens or ingredients for the purpose of inspection or experiment.

§ 115. Oath of applicant

The applicant shall make oath that he believes himself to be the original and first inventor of the process, machine, manufacture, or composition of matter, or improvement thereof, for which he solicits a patent; and shall state of what country he is a citizen. Such oath may be made before any person within the United States authorized by law to administer oaths, or, when made in a foreign country, before any diplomatic or consular officer of the United States authorized to administer oaths, or before any officer having an official seal and authorized to administer oaths in the foreign country in which the applicant may be, whose authority shall be proved by certificate of a diplomatic or consular officer of the United States, and such oath shall be valid if it complies with the laws of the state or country where made. When the application is made as provided in this title by a person other than the inventor, the oath may be so varied in form that it can be made by him.

§ 116. Joint inventors

When an invention is made by two or more persons jointly, they shall apply for patent jointly and each sign the application and make the required oath, except as otherwise provided in this title.

If a joint inventor refuses to join in an application for patent or cannot be found or reached after diligent effort, the application may be made by the other inventor on behalf of himself and the omitted inventor. The Commissioner, on proof of the pertinent facts and after such notice to the omitted inventor as he prescribes, may grant a patent to the inventor making the application, subject to the same rights which the omitted inventor would have had if he had been joined. The omitted inventor may subsequently join in the application.

Whenever a person is joined in an application for patent as joint inventor through error, or a joint inventor is not included in an application through error, and such error arose

without any deceptive intention on his part, the Commissioner may permit the application to be amended accordingly, under such terms as he prescribes.

§ 117. Death or incapacity of inventor

Legal representatives of deceased inventors and of those under legal incapacity may make application for patent upon compliance with the requirements and on the same terms and conditions applicable to the inventor.

§ 118. Filing by other than inventor

Whenever an inventor refuses to execute an application for patent, or cannot be found or reached after diligent effort, a person to whom the inventor has assigned or agreed in writing to assign the invention or who otherwise shows sufficient proprietary interest in the matter justifying such action, may make application for patent on behalf of and as agent for the inventor on proof of the pertinent facts and a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage; and the Commissioner may grant a patent to such inventor upon such notice to him as the Commissioner deems sufficient, and on compliance with such regulations as he prescribes.

§ 119. Benefit of earlier filing date in foreign country; right of priority

An application for patent for an invention filed in this country by any person who has, or whose legal representatives or assigns have, previously regularly filed an application for a patent for the same invention in a foreign country which affords similar privileges in the case of applications filed in the United States or to citizens of the United States, shall have the same effect as the same application would have if filed in this country on the date on which the application for patent for the same invention was first filed in such foreign country, if the application in this country is filed within twelve months from the earliest date on which such foreign application was filed; but no patent shall be granted on any application for patent for an invention which had been patented or described in a printed publication in any country more than one year before the date of the actual filing of the

application in this country, or which had been in public use or on sale in this country more than one year prior to such filing.

No application for patent shall be entitled to this right of priority unless a claim therefor and a certified copy of the original foreign application, specification and drawings upon which it is based are filed in the Patent Office before the patent is granted, or at such time during the pendency of the application as required by the Commissioner not earlier than six months after the filing of the application in this country. Such certification shall be made by the patent office of the foreign country in which filed and show the date of the application and of the filing of the specification and other papers. The Commissioner may require a translation of the papers filed if not in the English language and such other information as he deems necessary.

In like manner and subject to the same conditions and requirements, the right provided in this section may be based upon a subsequent regularly filed application in the same foreign country instead of the first filed foreign application, provided that any foreign application filed prior to such subsequent application has been withdrawn, abandoned, or otherwise disposed of, without having been laid open to public inspection and without leaving any rights outstanding, and has not served, nor thereafter shall serve, as a basis for claiming a right of priority. (Amended October 3, 1961, Public Law 87–333, sec. 1, 75 Stat. 748.)

Note —Section 4 (c) of the Act of July 19, 1952 provides that the second paragraph of section 119 shall not apply in the case of patents existing on January 1, 1953.

Note.—See pages 79–85 for statutes temporarily extending the period of priority.

Note.—Following is a list of countries with respect to which the right of priority referred to in this section has been recognized. The authority in the case of these countries is the International Convention for the Protection of Industrial Property (613 O.G. 23, 53 Stat. 1748; 775 O.G. 321), indicated by the letter I following the name of the country; the Inter-American Convention relating to Inventions, Patents, Designs and Industrial Models, signed at Buenos Aires August 20, 1910 (207 O.G. 935, 30 Stat. 1811), indicated by the letter P after the name of the country; or reciprocal legislation in the particular country, indicated by the letter L following the

name of the country. Australia (I), Austria (I), Belgium (I), Brazil (I, P), Bulgaria (I), Cameroon (I), Canada (I), Central African Republic (I), Ceylon (I), Chad, Republic of (I), Congo, Republic of (I), Costa Rica (P), Cuba (I, P), Czechoslovakia (I), Denmark (I), Dominican Republic (I, P), Ecuador (P), Egypt (United Arab Republic) (I), Finland (I), France (I), Germany, Federal Republic of (I), Great Britain (I), Greece (I), Guatemala (P), Haiti (P), Honduras (P), Hungary (I), Iceland (I), Indonesia (I), Iran (I), Ireland (I), Israel (I), Italy (I), Ivory Coast, Republic of (I), Japan (I), Kenya (I), Korea (L), Laos, Kingdom of (I), Lebanon (I), Liechenstein (I), Luxemburg (I), Malagasy, Republic of (I), Mauritania (I), Mexico (I), Monaco (I), Morocco (I), Netherlands (I), New Zealand (I), Nicaragua (P), Niger (I), Nigeria, Federation of (I), Norway (I), Panama (P), Paraguay (P), Philippines (I), Poland (I), Portugal (I), Rhodesia and Nyasaland, Federation of (I), Roumania (I), San Marino (I), Senegal, Republic of (I), Southern Rhodesia (I), Spain (I), Sweden (I), Switzerland (I), Syria (United Arab Republic) (I), Tanganyika (I), Trinidad and Tobago (I), Tunis (I), Turkey (I), Union of South Africa (I), U.S.S.R. (I), United Arab Republic (I), Upper Volta, Republic of (I), Uganda (I), Uruguay (P), Vatican City (I), Vietnam (I), Yugoslavia (I), Zambia (I).

120. Benefit of earlier filing date in the United States

An application for patent for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in an application previously filed in the United States by the same inventor shall have the same effect, as to such invention, as though filed on the date of the prior application, if filed before the patenting or abandonment of or termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and if it contains or is amended to contain a specific reference to the earlier filed application.

§ 121. Divisional applications

If two or more independent and distinct inventions are claimed in one application, the Commissioner may require the application to be restricted to one of the inventions. If the other invention is made the subject of a divisional application which complies with the requirements of section 120 of this title it shall be entitled to the benefit of the filing date of the original application. A patent issuing on an application with respect to which a requirement for restriction under this section has been made, or on an application filed

as a result of such a requirement, shall not be used as a reference either in the Patent Office or in the courts against a divisional application or against the original application or any patent issued on either of them, if the divisional application is filed before the issuance of the patent on the other application. If a divisional application is directed solely to subject matter described and claimed in the original application as filed, the Commissioner may dispense with signing and execution by the inventor. The validity of a patent shall not be questioned for failure of the Commissioner to require the application to be restricted to one invention.

§ 122. Confidential status of applications

Applications for patents shall be kept in confidence by the Patent Office and no information concerning the same given without authority of the applicant or owner unless necessary to carry out the provisions of any Act of Congress or in such special circumstances as may be determined by the Commissioner.

Chapter 12—Examination of Application

Sec.

131. Examination of application.
132. Notice of rejection; reexamination.
133. Time for prosecuting application.
134. Appeal to the Board of Appeals.
135. Interferences.

§ 131. Examination of application

The Commissioner shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Commissioner shall issue a patent therefor.

§ 132. Notice of rejection; reexamination

Whenever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Commissioner shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application;

and if after receiving such notice, the applicant persists in his claim for a patent, with or without amendment, the application shall be reexamined. No amendment shall introduce new matter into the disclosure of the invention.

§ 133. Time for prosecuting application

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

§ 134. Appeal to the Board of Appeals

An applicant for a patent, any of whose claims has been twice rejected, may appeal from the decision of the primary examiner to the Board of Appeals, having once paid the fee for such appeal.

135. Interferences

(a) Whenever an application is made for a patent which, in the opinion of the Commissioner, would interfere with any pending application, or with any unexpired patent, he shall give notice thereof to the applicants, or applicant and patentee, as the case may be. The question of priority of invention shall be determined by a board of patent interferences (consisting of three examiners of interferences) whose decision, if adverse to the claim of an applicant, shall constitute the final refusal by the Patent Office of the claims involved, and the Commissioner may issue a patent to the applicant who is adjudged the prior inventor. A final judgment adverse to a patentee from which no appeal or other review has been or can be taken or had shall constitute cancellation of the claims involved from the patent, and notice thereof shall be endorsed on copies of the patent thereafter distributed by the Patent Office.

(b) A claim which is the same as, or for the same or substantially the same subject matter as, a claim of an issued patent may not be made in any application unless such a claim is made prior to one year from the date on which the patent was granted.

(c) Any agreement or understanding between parties to an interference, including any collateral agreements referred to therein, made in connection with or in contemplation of the termination of the interference, shall be in writing and a true copy thereof filed in the Patent Office before the termination of the interference as between the said parties to the agreement or understanding. If any party filing the same so requests, the copy shall be kept separate from the file of the interference, and made available only to Government agencies on written request, or to any person on a showing of good cause. Failure to file the copy of such agreement or understanding shall render permanently unenforceable such agreement or understanding and any patent of such parties involved in the interference or any patent subsequently issued on any application of such parties so involved. The Commissioner may, however, on a showing of good cause for failure to file within the time prescribed, permit the filing of the agreement or understanding during the six-month period subsequent to the termination of the interference as between the parties to the agreement or understanding.

The Commissioner shall give notice to the parties or their attorneys of record, a reasonable time prior to said termination, of the filing requirement of this section. If the Commissioner gives such notice at a later time, irrespective of the right to file such agreement or understanding within the six-month period on a showing of good cause, the parties may file such agreement or understanding within sixty days of the receipt of such notice.

Any discretionary action of the Commissioner under this subsection shall be reviewable under section 10 of the Administrative Procedure Act. (Amended October 15, 1962, Public Law 87–831, 76 Stat. 958.)

Chapter 13—Review of Patent Office Decision

Sec.

141. Appeal to Court of Customs and Patent Appeals.
142. Notice of appeal.
143. Proceedings on appeal.
144. Decision on appeal.
145. Civil action to obtain patent.
146. Civil action in case of interference.

§ 141. Appeal to Court of Customs and Patent Appeals

An applicant dissatisfied with the decision of the Board of Appeals may appeal to the United States Court of Customs and Patent Appeals, thereby waiving his right to proceed under section 145 of this title. A party to an interference dissatisfied with the decision of the board of patent interferences on the question of priority may appeal to the United States Court of Customs and Patent Appeals, but such appeal shall be dismissed if any adverse party to such interference, within twenty days after the appellant has filed notice of appeal according to section 142 of this title, files notice with the Commissioner that he elects to have all further proceedings conducted as provided in section 146 of this title. Thereupon the appellant shall have thirty days thereafter within which to file a civil action under section 146, in default of which the decision appealed from shall govern the further proceedings in the case.

§ 142. Notice of appeal

When an appeal is taken to the United States Court of Customs and Patent Appeals, the appellant shall give notice thereof to the Commissioner, and shall file in the Patent Office his reasons of appeal, specifically set forth in writing, within such time after the date of the decision appealed from, not less than sixty days, as the Commissioner appoints.

§ 143. Proceedings on appeal

The United States Court of Customs and Patent Appeals shall, before hearing such appeal, give notice of the time and place of the hearing to the Commissioner and the parties thereto. The Commissioner shall transmit to the court certified copies of all the necessary original papers and evidence in the case specified by the appellant and any additional papers and evidence specified by the appellee and in an ex parte case the Commissioner shall furnish the court with the grounds of the decision of the Patent Office, in writing, touching all the points involved by the reasons of appeal.

§ 144. Decision on appeal

The United States Court of Customs and Patent Appeals, on petition, shall hear and determine such appeal on the evidence produced before the Patent Office, and the decision shall be

confined to the points set forth in the reasons of appeal. Upon its determination the court shall return to the Commissioner a certificate of its proceedings and decision, which shall be entered of record in the Patent Office and govern the further proceedings in the case.

§ 145. Civil action to obtain patent

An applicant dissatisfied with the decision of the Board of Appeals may unless appeal has been taken to the United States Court of Customs and Patent Appeals, have remedy by civil action against the Commissioner in the United States District Court for the District of Columbia if commenced within such time after such decision, not less than sixty days, as the Commissioner appoints. The court may adjudge that such applicant is entitled to receive a patent for his invention, as specified in any of his claims involved in the decision of the Board of Appeals, as the facts in the case may appear and such adjudication shall authorize the Commissioner to issue such patent on compliance with the requirements of law. All the expenses of the proceedings shall be paid by the applicant.

§ 146. Civil action in case of interference

Any party to an interference dissatisfied with the decision of the board of patent interferences on the question of priority, may have remedy by civil action, if commenced within such time after such decision, not less than sixty days, as the Commissioner appoints or as provided in section 141 of this title, unless he has appealed to the United States Court of Customs and Patent Appeals, and such appeal is pending or has been decided. In such suits the record in the Patent Office shall be admitted on motion of either party upon the terms and conditions as to costs, expenses, and the further cross-examination of the witnesses as the court imposes, without prejudice to the right of the parties to take further testimony. The testimony and exhibits of the record in the Patent Office when admitted shall have the same effect as if originally taken and produced in the suit.

Such suit may be instituted against the party in interest as shown by the records of the Patent Office at the time of the

decision complained of, but any party in interest may become a party to the action. If there be adverse parties residing in a plurality of districts not embraced within the same state, or an adverse party residing in a foreign country, the United States District Court for the District of Columbia shall have jurisdiction and may issue summons against the adverse parties directed to the marshal of any district in which any adverse party resides. Summons against adverse parties residing in foreign countries may be served by publication or otherwise as the court directs. The Commissioner shall not be a necessary party but he shall be notified of the filing of the suit by the clerk of the court in which it is filed and shall have the right to intervene. Judgment of the court in favor of the right of an applicant to a patent shall authorize the Commissioner to issue such patent on the filing in the Patent Office of a certified copy of the judgment and on compliance with the requirements of law.

Chapter 14—Issue of Patent

Sec.
151. Issue of patent.
152. Issue of patent to assignee.
153. How issued.
154. Contents and term of patent.

§ 151. Issue of patent

If it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant. The notice shall specify a sum, constituting the issue fee or a portion thereof, which shall be paid within three months thereafter.

Upon payment of this sum the patent shall issue, but if payment is not timely made, the application shall be regarded as abandoned.

Any remaining balance of the issue fee shall be paid within three months from the sending of a notice thereof and, if not paid, the patent shall lapse at the termination of this three-month period. In calculating the amount of a remaining balance, charges for a page or less may be disregarded.

If any payment required by this section is not timely made, but is submitted with the fee for delayed payment within three

months after the due date and sufficient cause is shown for the late payment, it may be accepted by the Commissioner as though no abandonment or lapse had ever occurred. (Amended July 24, 1965, Public Law 89–83, secs. 4 and 6, 79 Stat. 260.)

Note.—See Section 7(c) of the Act of July 24, 1965, quoted following 35 U.S.C. 41.

§ 152. Issue of patent to assignee

Patents may be granted to the assignee of the inventor of record in the Patent Office, upon the application made and the specification sworn to by the inventor, except as otherwise provided in this title.

§ 153. How issued

Patents shall be issued in the name of the United States of America, under the seal of the Patent Office, and shall be signed by the Commissioner or have his signature placed thereon and attested by an officer of the Patent Office designated by the Commissioner, and shall be recorded in the Patent Office.

§ 154. Contents and term of patent

Every patent shall contain a short title of the invention and a grant to the patentee, his heirs or assigns, for the term of seventeen years, subject to the payment of issue fees as provided for in this title, of the right to exclude others from making, using, or selling the invention throughout the United States, referring to the specification for the particulars thereof. A copy of the specification and drawings shall be annexed to the patent and be a part thereof. (Amended July 24, 1965, Public Law 89–83, sec. 5, 79 Stat. 261.)

Chapter 15—Plant Patents

Sec.
161. Patents for plants.
162. Description, claim.
163. Grant.
164. Assistance of Department of Agriculture.

§ 161. Patents for plants

Whoever invents or discovers and asexually reproduces any distinct and new variety of plant, including cultivated sports, mutants, hybrids, and newly found seedlings, other than a

tuber propagated plant or a plant found in an uncultivated state, may obtain a patent therefor, subject to the conditions and requirements of this title. (Amended September 3, 1954, 68 Stat. 1190.)

The provisions of this title relating to patents for inventions shall apply to patents for plants, except as otherwise provided.

§ 162. Description, claim

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible.

The claim in the specification shall be in formal terms to the plant shown and described.

§ 163. Grant

In the case of a plant patent the grant shall be of the right to exclude others from asexually reproducing the plant or selling or using the plant so reproduced.

§ 164. Assistance of Department of Agriculture

The President may by Executive order direct the Secretary of Agriculture, in accordance with the requests of the Commissioner, for the purpose of carrying into effect the provisions of this title with respect to plants (1) to furnish available information of the Department of Agriculture, (2) to conduct through the appropriate bureau or division of the Department research upon special problems, or (3) to detail to the Commissioner officers and employees of the Department.

Chapter 16—Designs

Sec.
171. Patents for designs.
172. Right of priority.
173. Term of design patent.

§ 171. Patents for designs

Whoever invents any new, original and ornamental design for an article of manufacture may obtain a patent therefor, subject to the conditions and requirements of this title.

The provisions of this title relating to patents for inventions shall apply to patents for designs, except as otherwise provided.

§ 172. Right of priority

The right of priority provided for by section 119 of this title and the time specified in section 102 (d) shall be six months in the case of designs.

§ 173. Term of design patent

Patents for designs may be granted for the term of three years and six months, or for seven years, or for fourteen years, as the applicant, in his application, elects.

Chapter 17—Secrecy of Certain Inventions and Filing Applications in Foreign Countries

Sec.
181. Secrecy of certain inventions and withholding of patent.
182. Abandonment of invention for unauthorized disclosure.
183. Right of compensation.
184. Filing of application in foreign country.
185. Patent barred for filing without license.
186. Penalty.
187. Nonapplicability to certain persons.
188. Rules and regulations, delegation of power.

§ 181. Secrecy of certain inventions and withholding of patent

Whenever publication or disclosure by the grant of a patent on an invention in which the Government has a property interest might, in the opinion of the head of the interested Government agency, be detrimental to the national security, the Commissioner upon being so notified shall order that the invention be kept secret and shall withhold the grant of a patent therefor under the conditions set forth hereinafter.

Whenever the publication or disclosure of an invention by the granting of a patent, in which the Government does not have a property interest, might, in the opinion of the Commissioner, be detrimental to the national security, he shall make the application for patent in which such invention is disclosed available for inspection to the Atomic Energy Commission, the Secretary of Defense, and the chief officer of any other department or agency of the Government designated by the President as a defense agency of the United States.

Each individual to whom the application is disclosed shall sign a dated acknowledgment thereof, which acknowledgment shall be entered in the file of the application. If, in the opinion

of the Atomic Energy Commission, the Secretary of a Defense Department, or the chief officer of another department or agency so designated, the publication or disclosure of the invention by the granting of a patent therefor would be detrimental to the national security, the Atomic Energy Commission, the Secretary of a Defense Department, or such other chief officer shall notify the Commissioner and the Commissioner shall order that the invention be kept secret and shall withhold the grant of a patent for such period as the national interest requires, and notify the applicant thereof. Upon proper showing by the head of the department or agency who caused the secrecy order to be issued that the examination of the application might jeopardize the national interest, the Commissioner shall thereupon maintain the application in a sealed condition and notify the applicant thereof. The owner of an application which has been placed under a secrecy order shall have a right to appeal from the order to the Secretary of Commerce under rules prescribed by him.

An invention shall not be ordered kept secret and the grant of a patent withheld for a period of more than one year. The Commissioner shall renew the order at the end thereof, or at the end of any renewal period, for additional periods of one year upon notification by the head of the department or the chief officer of the agency who caused the order to be issued that an affirmative determination has been made that the national interest continues so to require. An order in effect, or issued, during a time when the United States is at war, shall remain in effect for the duration of hostilities and one year following cessation of hostilities. An order in effect, or issued, during a national emergency declared by the President shall remain in effect for the duration of the national emergency and six months thereafter. The Commissioner may rescind any order upon notification by the heads of the departments and the chief officers of the agencies who caused the order to be issued that the publication or disclosure of the invention is no longer deemed detrimental to the national security.

Note.—Section 4 (h) of the Act of July 19, 1952, provides with respect to the repeal of the prior statute corresponding to sections 181 to 188 of Title 35:

"The repeal of sections 1–9, 11, 12 of the Act of Congress approved February 1, 1952 (ch. 4, 66 Stat. 3), shall not affect any rights or liabilities existing on the date of approval of this Act. An order of secrecy issued under or in effect under the repealed Act and in effect on the date of approval of this Act, shall be considered as issued under this Act, and any claims arising under the repealed Act or subject to presentation and determination pursuant thereto and unsettled as of the effective date of this Act, may be presented and determined pursuant to the provisions of this Act."

§ 182. Abandonment of invention for unauthorized disclosure

The invention disclosed in an application for patent subject to an order made pursuant to section 181 of this title may be held abandoned upon its being established by the Commissioner that in violation of said order the invention has been published or disclosed or that an application for a patent therefor has been filed in a foreign country by the inventor, his successors, assigns, or legal representatives, or anyone in privity with him or them, without the consent of the Commissioner. The abandonment shall be held to have occurred as of the time of violation. The consent of the Commissioner shall not be given without the concurrence of the heads of the departments and the chief officers of the agencies who caused the order to be issued. A holding of abandonment shall constitute forfeiture by the applicant, his successors, assigns, or legal representatives, or anyone in privity with him or them, of all claims against the United States based upon such invention.

§ 183. Right to compensation

An applicant, his successors, assigns, or legal representatives, whose patent is withheld as herein provided, shall have the right, beginning at the date the applicant is notified that, except for such order, his application is otherwise in condition for allowance, or February 1, 1952, whichever is later, and ending six years after a patent is issued thereon, to apply to the head of any department or agency who caused the order to be issued for compensation for the damage caused by the order of secrecy and/or for the use of the invention by the Government, resulting from his disclosure. The right to compensation for use shall begin on the date of the first use of the invention by the Government. The head of

the department or agency is authorized, upon the presentation of a claim, to enter into an agreement with the applicant, his successors, assigns, or legal representatives, in full settlement for the damage and/or use. This settlement agreement shall be conclusive for all purposes notwithstanding any other provision of law to the contrary. If full settlement of the claim cannot be effected, the head of the department or agency may award and pay to such applicant, his successors, assigns, or legal representatives, a sum not exceeding 75 per centum of the sum which the head of the department or agency considers just compensation for the damage and/or use. A claimant may bring suit against the United States in the Court of Claims or in the District Court of the United States for the district in which such claimant is a resident for an amount which when added to the award shall constitute just compensation for the damage and/or use of the invention by the Government. The owner of any patent issued upon an application that was subject to a secrecy order issued pursuant to section 181 of this title, who did not apply for compensation as above provided, shall have the right, after the date of issuance of such patent, to bring suit in the Court of Claims for just compensation for the damage caused by reason of the order of secrecy and/or use by the Government of the invention resulting from his disclosure. The right to compensation for use shall begin on the date of the first use of the invention by the Government. In a suit under the provisions of this section the United States may avail itself of all defenses it may plead in an action under section 1498 of title 28. This section shall not confer a right of action on anyone or his successors, assigns, or legal representatives who, while in the full-time employment or service of the United States, discovered, invented, or developed the invention on which the claim is based.

§ 184. Filing of application in foreign country

Except when authorized by a license obtained from the Commissioner a person shall not file or cause or authorize to be filed in any foreign country prior to six months after filing in the United States an application for patent or for the registration of a utility model, industrial design, or model in

respect of an invention made in this country. A license shall not be granted with respect to an invention subject to an order issued by the Commissioner pursuant to section 181 of this title without the concurrence of the head of the departments and the chief officers of the agencies who caused the order to be issued. The license may be granted retroactively where an application has been inadvertently filed abroad and the application does not disclose an invention within the scope of section 181 of this title.

The term "application" when used in this chapter includes applications and any modifications, amendments, or supplements thereto, or divisions thereof.

§ 185. Patent barred for filing without license

Notwithstanding any other provisions of law any person, and his successors, assigns, or legal representatives, shall not receive a United States patent for an invention if that person, or his successors, assigns, or legal representatives shall, without procuring the license prescribed in section 184 of this title, have made, or consented to or assisted another's making, application in a foreign country for a patent or for the registration of a utility model, industrial design, or model in respect of the invention. A United States patent issued to such person, his successors, assigns, or legal representatives shall be invalid.

§ 186. Penalty

Whoever, during the period or periods of time an invention has been ordered to be kept secret and the grant of a patent thereon withheld pursuant to section 181 of this title, shall, with knowledge of such order and without due authorization, willfully publish or disclose or authorize or cause to be published or disclosed the invention, or material information with respect thereto, or whoever, in violation of the provisions of section 184 of this title, shall file or cause or authorize to be filed in any foreign country an application for patent or for the registration of a utility model, industrial design, or model in respect of any invention made in the United States, shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than two years, or both.

§ 187. Nonapplicability to certain persons

The prohibitions and penalties of this chapter shall not apply to any officer or agent of the United States acting within the scope of his authority, nor to any person acting upon his written instructions or permission.

§ 188. Rules and regulations, delegation of power

The Atomic Energy Commission, the Secretary of a defense department, the chief officer of any other department or agency of the Government designated by the President as a defense agency of the United States, and the Secretary of Commerce, may separately issue rules and regulations to enable the respective department or agency to carry out the provisions of this chapter, and may delegate any power conferred by this chapter.

PART III—PATENTS AND PROTECTION OF PATENT RIGHTS

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Chapter 25—Amendment and Correction of Patents

Sec.

251. Reissue of defective patents.
252. Effect of reissue.
253. Disclaimer.
254. Certificate of correction of Patent Office mistake.
255. Certificate of correction of applicant's mistake.
256. Misjoinder of inventor.

§ 251. Reissue of defective patents

Whenever any patent is, through error without any deceptive intention, deemed wholly or partly inoperative or invalid, by reason of a defective specification or drawing, or by reason of the patentee claiming more or less than he had a right to claim in the patent, the Commissioner shall, on the surrender of such patent and the payment of the fee required by law, reissue the patent for the invention disclosed in the original

patent, and in accordance with a new and amended application, for the unexpired part of the term of the original patent. No new matter shall be introduced into the application for reissue.

The Commissioner may issue several reissued patents for distinct and separate parts of the thing patented, upon demand of the applicant, and upon payment of the required fee for a reissue for each of such reissued patents.

The provisions of this title relating to applications for patent shall be applicable to applications for reissue of a patent, except that application for reissue may be made and sworn to by the assignee of the entire interest if the application does not seek to enlarge the scope of the claims of the original patent.

No reissued patent shall be granted enlarging the scope of the claims of the original patent unless applied for within two years from the grant of the original patent.

§ 252. Effect of reissue

The surrender of the original patent shall take effect upon the issue of the reissued patent, and every reissued patent shall have the same effect and operation in law, on the trial of actions for causes thereafter arising, as if the same had been originally granted in such amended form, but in so far as the claims of the original and reissued patents are identical, such surrender shall not affect any action then pending nor abate any cause of action then existing, and the reissued patent, to the extent that its claims are identical with the original patent, shall constitute a continuation thereof and have effect continuously from the date of the original patent.

No reissued patent shall abridge or affect the right of any person or his successors in business who made, purchased or used prior to the grant of a reissue anything patented by the reissued patent, to continue the use of, or to sell to others to be used or sold, the specific thing so made, purchased or used, unless the making, using or selling of such thing infringes a valid claim of the reissued patent which was in the original patent. The court before which such matter is in question may provide for the continued manufacture, use or sale of the thing made, purchased or used as specified, or for the manu-

facture, use or sale of which substantial preparation was made before the grant of the reissue, and it may also provide for the continued practice of any process patented by the reissue, practiced, or for the practice of which substantial preparation was made, prior to the grant of the reissue, to the extent and under such terms as the court deems equitable for the protection of investments made or business commenced before the grant of the reissue.

§ 253. Disclaimer

Whenever, without any deceptive intention, a claim of a patent is invalid the remaining claims shall not thereby be rendered invalid. A patentee, whether of the whole or any sectional interest therein, may, on payment of the fee required by law, make disclaimer of any complete claim, stating therein the extent of his interest in such patent. Such disclaimer shall be in writing and recorded in the Patent Office; and it shall thereafter be considered as part of the original patent to the extent of the interest possessed by the disclaimant and by those claiming under him.

In like manner any patentee or applicant may disclaim or dedicate to the public the entire term, or any terminal part of the term, of the patent granted or to be granted.

§ 254. Certificate of correction of Patent Office mistake

Whenever a mistake in a patent, incurred through the fault of the Patent Office, is clearly disclosed by the records of the Office, the Commissioner may issue a certificate of correction stating the fact and nature of such mistake, under seal, without charge, to be recorded in the records of patents. A printed copy thereof shall be attached to each printed copy of the patent, and such certificate shall be considered as part of the original patent. Every such patent, together with such certificate, shall have the same effect and operation in law on the trial of actions for causes thereafter arising as if the same had been originally issued in such corrected form. The Commissioner may issue a corrected patent without charge in lieu of and with like effect as a certificate of correction.

§ 255. Certificate of correction of applicant's mistake

Whenever a mistake of a clerical or typographical nature, or

of minor character, which was not the fault of the Patent Office, appears in a patent and a showing has been made that such mistake occurred in good faith, the Commissioner may, upon payment of the required fee, issue a certificate of correction, if the correction does not involve such changes in the patent as would constitute new matter or would require reexamination. Such patent, together with the certificate, shall have the same effect and operation in law on the trial of actions for causes thereafter arising as if the same had been originally issued in such corrected form.

§ 256. Misjoinder of inventor

Whenever a patent is issued on the application of persons as joint inventors and it appears that one of such persons was not in fact a joint inventor, and that he was included as a joint inventor by error and without any deceptive intention, the Commissioner may, on application of all the parties and assignees, with proof of the facts and such other requirements as may be imposed, issue a certificate deleting the name of the erroneously joined person from the patent.

Whenever a patent is issued and it appears that a person was a joint inventor, but was omitted by error and without deceptive intention on his part, the Commissioner may, on application of all the parties and assignees, with proof of the facts and such other requirements as may be imposed, issue a certificate adding his name to the patent as a joint inventor.

The misjoinder or nonjoinder of joint inventors shall not invalidate a patent, if such error can be corrected as provided in this section. The court before which such matter is called in question may order correction of the patent on notice and hearing of all parties concerned and the Commissioner shall issue a certificate accordingly.

Chapter 26—Ownership and Assignment

Sec.
261. Ownership; assignment.
262. Joint owners.

§ 261. Ownership; assignment

Subject to the provisions of this title, patents shall have the attributes of personal property.

Applications for patent, patents, or any interest therein, shall be assignable in law by an instrument in writing. The applicant, patentee, or his assigns or legal representatives may in like manner grant and convey an exclusive right under his application for patent, or patents, to the whole or any specified part of the United States.

A certificate of acknowledgment under the hand and official seal of a person authorized to administer oaths within the United States, or, in a foreign country, of a diplomatic or consular officer of the United States or an officer authorized to administer oaths whose authority is proved by a certificate of a diplomatic or consular officer of the United States, shall be prima facie evidence of the execution of an assignment, grant or conveyance of a patent or application for patent.

An assignment, grant or conveyance shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it is recorded in the Patent Office within three months from its date or prior to the date of such subsequent purchase or mortgage.

§ 262. Joint owners

In the absence of any agreement to the contrary, each of the joint owners of a patent may make, use or sell the patented invention without the consent of and without accounting to the other owners.

Chapter 27—Government Interests in Patents

Sec.
266. [Repealed.]
267. Time for taking action in Government applications.

§ 266. Issue of patents without fees to Government employees

(Repealed July 24, 1965, Public Law 89–83, sec. 8, 79 Stat. 261.)

§ 267. Time for taking action in Government applications

Notwithstanding the provisions of sections 133 and 151 of this title, the Commissioner may extend the time for taking any action to three years, when an application has become the property of the United States and the head of the appropriate department or agency of the Government has certified to the

Commissioner that the invention disclosed therein is important to the armament or defense of the United States.

Chapter 28—Infringement of Patents

Sec.
271. Infringement of patent.
272. Temporary presence in the United States.

§ 271. Infringement of patent

(a) Except as otherwise provided in this title, whoever without authority makes, uses or sells any patented invention, within the United States during the term of the patent therefor, infringes the patent.

(b) Whoever actively induces infringement of a patent shall be liable as an infringer.

(c) Whoever sells a component of a patented machine, manufacture, combination or composition, or a material or apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial noninfringing use, shall be liable as a contributory infringer.

(d) No patent owner otherwise entitled to relief for infringement or contributory infringement of a patent shall be denied relief or deemed guilty of misuse or illegal extension of the patent right by reason of his having done one or more of the following: (1) derived revenue from acts which if performed by another without his consent would constitute contributory infringement of the patent; (2) licensed or authorized another to perform acts which if performed without his consent would constitute contributory infringement of the patent; (3) sought to enforce his patent rights against infringement or contributory infringement.

§ 272. Temporary presence in the United States

The use of any invention in any vessel, aircraft or vehicle of any country which affords similar privileges to vessels, aircraft or vehicles of the United States, entering the United States temporarily or accidentally, shall not constitute infringement of any patent, if the invention is used exclusively

for the needs of the vessel, aircraft or vehicle and is not sold in or used for the manufacture of anything to be sold in or exported from the United States.

Chapter 29—Remedies for Infringement of Patent, and Other Actions

Sec.
281. Remedy for infringement of patent.
282. Presumption of validity; defenses.
283. Injunction.
284. Damages.
285. Attorney fees.
286. Time limitation on damages.
287. Limitation on damages; marking and notice.
288. Action for infringement of a patent containing an invalid claim.
289. Additional remedy for infringement of design patent.
290. Notice of patent suits.
291. Interfering patents.
292. False marking.
293. Nonresident patentee, service and notice.

§ 281. Remedy for infringement of patent

A patentee shall have remedy by civil action for infringement of his patent.

§ 282. Presumption of validity; defenses

A patent shall be presumed valid. Each claim of a patent (whether in independent or dependent form) shall be presumed valid independently of the validity of other claims; dependent claims shall be presumed valid even though dependent upon an invalid claim. The burden of establishing invalidity of a patent or any claim thereof shall rest on the party asserting it.

The following shall be defenses in any action involving the validity or infringement of a patent and shall be pleaded:

(1) Noninfringement, absence of liability for infringement, or unenforceability,

(2) Invalidity of the patent or any claim in suit on any ground specified in part II of this title as a condition for patentability,

(3) Invalidity of the patent or any claim in suit for failure to comply with any requirement of sections 112 or 251 of this title,

(4) Any other fact or act made a defense by this title.

In actions involving the validity or infringement of a patent the party asserting invalidity or noninfringement shall give notice in the pleadings or otherwise in writing to the adverse party at least thirty days before the trial, of the country, number, date, and name of the patentee of any patent, the title, date, and page numbers of any publication to be relied upon as anticipation of the patent in suit or, except in actions in the United States Court of Claims, as showing the state of the art, and the name and address of any person who may be relied upon as the prior inventor or as having prior knowledge of or as having previously used or offered for sale the invention of the patent in suit. In the absence of such notice proof of the said matters may not be made at the trial except on such terms as the court requires. (Amended July 24, 1965, Public Law 89–83, sec. 10, 79 Stat. 261.)

§ 283. Injunction

The several courts having jurisdiction of cases under this title may grant injunctions in accordance with the principles of equity to prevent the violation of any right secured by patent, on such terms as the court deems reasonable.

§ 284. Damages

Upon finding for the claimant the court shall award the claimant damages adequate to compensate for the infringement but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs as fixed by the court.

When the damages are not found by a jury, the court shall assess them. In either event the court may increase the damages up to three times the amount found or assessed.

The court may receive expert testimony as an aid to the determination of damages or of what royalty would be reasonable under the circumstances.

§ 285. Attorney fees

The court in exceptional cases may award reasonable attorney fees to the prevailing party.

§ 286. Time limitation on damages

Except as otherwise provided by law, no recovery shall be

had for any infringement committed more than six years prior to the filing of the complaint or counterclaim for infringement in the action.

In the case of claims against the United States Government for use of a patented invention, the period before bringing suit, up to six years, between the date of receipt of a written claim for compensation by the department or agency of the Government having authority to settle such claim, and the date of mailing by the Government of a notice to the claimant that his claim has been denied shall not be counted as part of the period referred to in the preceding paragraph.

§ 287. Limitation on damages; marking and notice

Patentees, and persons making or selling any patented article for or under them, may give notice to the public that the same is patented, either by fixing thereon the word "patent" or the abbreviation "pat.", together with the number of the patent, or when, from the character of the article, this can not be done, by fixing to it, or to the package wherein one or more of them is contained, a label containing a like notice. In the event of failure so to mark, no damages shall be recovered by the patentee in any action for infringement, except on proof that the infringer was notified of the infringement and continued to infringe thereafter, in which event damages may be recovered only for infringement occurring after such notice. Filing of an action for infringement shall constitute such notice.

§ 288. Action for infringement of a patent containing an invalid claim

Whenever, without deceptive intention, a claim of a patent is invalid, an action may be maintained for the infringement of a claim of the patent which may be valid. The patentee shall recover no costs unless a disclaimer of the invalid claim has been entered at the Patent Office before the commencement of the suit.

§ 289. Additional remedy for infringement of design patent

Whoever during the term of a patent for a design, without license of the owner, (1) applies the patented design, or any colorable imitation thereof, to any article of manufacture for

the purpose of sale, or (2) sells or exposes for sale any article of manufacture to which such design or colorable imitation has been applied shall be liable to the owner to the extent of his total profit, but not less than $250, recoverable in any United States district court having jurisdiction of the parties.

Nothing in this section shall prevent, lessen, or impeach any other remedy which an owner of an infringed patent has under the provisions of this title, but he shall not twice recover the profit made from the infringement.

§ 290. Notice of patent suits

The clerks of the courts of the United States, within one month after the filing of an action under this title shall give notice thereof in writing to the Commissioner, setting forth so far as known the names and addresses of the parties, name of the inventor, and the designating number of the patent upon which the action has been brought. If any other patent is subsequently included in the action he shall give like notice thereof. Within one month after the decision is rendered or a judgment issued the clerk of the court shall give notice thereof to the Commissioner. The Commissioner shall, on receipt of such notices, enter the same in the file of such patent.

§ 291. Interfering patents

The owner of an interfering patent may have relief against the owner of another by civil action, and the court may adjudge the question of the validity of any of the interfering patents, in whole or in part. The provisions of the second paragraph of section 146 of this title shall apply to actions brought under this section.

§ 292. False marking

(a) Whoever, without the consent of the patentee, marks upon, or affixes to, or uses in advertising in connection with anything made, used, or sold by him, the name or any imitation of the name of the patentee, the patent number, or the words "patent," "patentee," or the like, with the intent of counterfeiting or imitating the mark of the patentee, or of deceiving the public and inducing them to believe that the thing was made or sold by or with the consent of the patentee; or

Whoever marks upon, or affixes to, or uses in advertising in

connection with any unpatented article, the word "patent" or any word or number importing that the same is patented, for the purpose of deceiving the public; or

Whoever marks upon, or affixes to, or uses in advertising in connection with any article, the words "patent applied for," "patent pending," or any word importing that an application for patent has been made, when no application for patent has been made, or if made, is not pending, for the purpose of deceiving the public—

Shall be fined not more than $500 for every such offense.

(b) Any person may sue for the penalty, in which event one-half shall go to the person suing and the other to the use of the United States.

§ 293. Nonresident patentee; service and notice

Every patentee not residing in the United States may file in the Patent Office a written designation stating the name and address of a person residing within the United States on whom may be served process or notice of proceedings affecting the patent or rights thereunder. If the person designated cannot be found at the address given in the last designation, or if no person has been designated, the United States District Court for the District of Columbia shall have jurisdiction and summons shall be served by publication or otherwise as the court directs. The court shall have the same jurisdiction to take any action respecting the patent or rights thereunder that it would have if the patentee were personally within the jurisdiction of the court.

NOTES OF OTHER STATUTES

United States Code

Some sections of other titles of the United States Code, relating to patents or the Patent Office, are reprinted or noted here for convenience. This list does not purport to be complete.

TITLE 5.—EXECUTIVE DEPARTMENTS AND GOVERNMENT OFFICERS AND EMPLOYEES

CHAPTER 1.—PROVISIONS APPLICABLE TO DEPARTMENTS AND OFFICERS GENERALLY

5 U. S. C. 101. Advertising practice before departments or offices of Government. It shall be unlawful for any person, firm, or corporation practicing before any department or office of the Government to use the name of any Member of either House of Congress or of any officer of the Government in advertising the said business. (Apr. 27, 1916, ch. 89, sec. 1, 39 Stat. 54.)

TITLE 11.—BANKRUPTCY

CHAPTER 7.—ESTATES

11 U. S. C. 110. Title to property. (a) The trustee of the estate of a bankrupt and his successor or successors, if any, upon his or their appointment and qualification, shall in turn be vested by operation of law with the title of the bankrupt as of the date of the filing of the petition initiating a proceeding under this title, except insofar, as it is to property which is held to be exempt, to all of the following kinds of property wherever located (1) documents relating to his property; (2) interests in patents, patent rights, copyrights, and trade-marks, and in applications therefor: *Provided*, That in case the trustee, within thirty days after appointment and qualification, does not notify the applicant for a patent, copyright, or trade-mark of his election to prosecute the application to allowance or rejection, the bankrupt may apply to the court for an order revesting him with the title thereto, which petition shall be granted unless for cause shown by the trustee the court grants further time to the trustee for making such election; and such applicant may, in any event, at any time petition the court to be revested with such title in case the trustee shall fail to prosecute such application with reasonable diligence; and the court, upon revesting the bankrupt with such title, shall direct the trustee to execute

proper instruments of transfer to make the same effective in law and upon the records; . . . (g) The title to property of a bankrupt estate which has been sold, as herein provided, shall be conveyed to the purchaser by the trustee. . . . (July 1, 1898, ch. 541, sec. 70, 30 Stat. 565; Feb. 5, 1903, ch. 487, sec. 16, 32 Stat. 800; May 27, 1926, ch. 406, sec. 16, 44 Stat. 667; June 22, 1938, ch. 575, sec. 1, 52 Stat. 879; Mar. 18, 1950, ch. 70, sec. 2, 64 Stat. 23; July 7, 1952, ch. 579, sec. 23, 66 Stat. 429; Sept. 25, 1962, Pub. L. 87-681, §§ 9, 10, 76 Stat. 571, 572.)

TITLE 15.—COMMERCE AND TRADE

Chapter 1.—Monopolies and Combinations in Restraint of Trade

15 U.S.C. 14. Sale, etc., on agreement not to use goods of competitor. It shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, whether patented or unpatented, for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce. (Oct. 15, 1914, ch. 323, sec. 3, 38 Stat. 731.)

TITLE 16.—CONSERVATION

Chapter 12A.—Tennessee Valley Authority

16 U. S. C. 831d. Directors; maintenance and operation of plant for production, sale, and distribution of fertilizer and power. [Inventions of employees.] The board is authorized— . . .

(i) To request the assistance and advice of any officer, agent, or employee of any executive department or of any independent office of the United States, to enable the Corporation the better to carry out its powers successfully, and as far as practicable shall utilize the services of such officers, agents, and employees, and the President shall, if in his opinion the public interest, service, or economy so require, direct that such assistance, advice, and service be rendered to the Corporation, and any individual that may be by the President directed to render such assistance, advice, and service shall be thereafter subject to the orders, rules, and regulations of the board: *Provided*, That any invention or discovery made by virtue of and incidental to such service by an employee of the Government of the United States serving under this section, or by any employee of the Corporation, together

with any patents which may be granted thereon, shall be the sole and exclusive property of the Corporation, which is authorized to grant such licenses thereunder as shall be authorized by the board: *Provided further*, That the board may pay to such inventor such sum from the income from sale of licenses as it may deem proper. . . . (May 18, 1933, ch. 32, sec. 5, 48 Stat. 61; Aug. 31, 1935, ch. 836, sec. 4, 49 Stat. 1076; July 3, 1952, ch. 570, sec. 2 (a), 66 Stat. 334; Aug. 6, 1959, Pub. L. 86–137, § 3, 73 Stat. 285.)

16 U. S. C. 831r. Patents; access to Patent Office and right to copy patents; compensation to patentees. The Corporation, as an instrumentality and agency of the Government of the United States for the purpose of executing its constitutional powers, shall have access to the Patent Office of the United States for the purpose of studying, ascertaining, and copying all methods, formulae, and scientific information (not including access to pending applications for patents) necessary to enable the Corporation to use and employ the mose efficacious and economical process for the production of fixed nitrogen, or any essential ingredient of fertilizer, or any method of improving and cheapening the production of hydroelectric power, and any owner of a patent whose patent rights may have been thus in any way copied, used, infringed, or employed by the exercise of this authority by the Corporation shall have as the exclusive remedy a cause of action against the Corporation to be instituted and prosecuted on the equity side of the appropriate district court of the United States, for the recovery of reasonable compensation for such infringement. The Commissioner of Patents shall furnish to the Corporation, at its request and without payment of fees, copies of documents on file in his office: *Provided*, That the benefits of this section shall not apply to any art, machine, method of manufacture, or composition of matter, discovered or invented by such employee during the time of his employment or service with the Corporation or with the Government of the United States. (May 18, 1933, ch. 32, sec. 19, 48 Stat. 68.)

TITLE 18.—CRIMES AND CRIMINAL PROCEDURE

Chapter 11.—Bribery, Graft, and Conflicts of Interest

18 U.S.C. 203. Compensation to Members of Congress, officers, and others in matters affecting the Government. (a) Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receives or agrees to receive, or asks, demands, solicits, or seeks, any compensation for any services rendered or to be rendered either by himself or another—

(1) at a time when he is a Member of Congress, Member of Congress Elect, Resident Commissioner, or Resident Commissioner Elect; or

(2) at a time when he is an officer or employee of the United States in the executive, legislative, or judicial branch of the Government, or in

any agency of the United States, including the District of Columbia, in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court martial, officer, or any civil, military, or naval commission, or

(b) Whoever, knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly gives, promises, or offers any compensation for any such services rendered or to be rendered at a time when the person to whom the compensation is given, promised, or offered, is or was such a Member, Commissioner, officer, or employee—

Shall be fined not more than $10,000 or imprisoned for not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.

(c) A special Government employee shall be subject to subsection (a) only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or (2) which is pending in the department or agency of the Government in which he is serving: *Provided*, That clause (2) shall not apply in the case of a special Government employee who has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days. (Added Pub. L. 87–849, §1(a), Oct. 23, 1962, 76 Stat. 1121.)

18 U.S.C. 205. Activities of officers and employees in claims against and other matters affecting the Government. Whoever, being an officer or employee of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, including the District of Columbia, otherwise than in the proper discharge of his official duties—

(1) acts as agent or attorney for prosecuting any claim against the United States, or receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim, or

(2) acts as agent or attorney for anyone before any department, agency, court, court-martial, officer, or any civil, military, or naval commission in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest—

Shall be fined not more than $10,000 or imprisoned for not more than two years or both.

A special Government employee shall be subject to the preceding paragraphs only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or (2) which is pending in the department or agency of the Government in which he is serving: *Provided*, That clause (2) shall not apply in the case of a special Government employee who has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days.

Nothing herein prevents an officer or employee, if not inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings.

Nothing herein or in section 203 prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except in those matters in which he has participated personally and substantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of his official responsibility, provided that the Government official responsible for appointment to his position approves.

Nothing herein or in section 203 prevents a special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with or for the benefit of, the United States provided that the head of the department or agency concerned with the grant or contract shall certify in writing that the national interest so requires.

Such certification shall be published in the Federal Register.

Nothing herein prevents an officer or employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt. (Added Pub. L. 87-849, § 1(a), Oct. 23, 1962, 76 Stat. 1122.)

18 U.S.C. 206. Exemption of retired officers of the uniformed services. Sections 203 and 205 of this title shall not apply to a retired officer of the uniformed services of the United States while not on active duty and not otherwise an officer or employee of the United States, or to any person specially excepted by Act of Congress. (Added Pub. L. 87-849, § 1(a), Oct. 23, 1962, 76 Stat. 1123.)

18 U.S.C. 207. Disqualification of former officers and employees in matters connected with former duties or official responsibilities; disqualification of partners. (a) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, after his employment has ceased, knowingly acts as agent or attorney for anyone other than the United States in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which he participated personally and substantially as an officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, while so employed, or

(b) Whoever, having been so employed, within one year after his employment has ceased, appears personally before any court or department or agency of the Government as agent, or attorney for, anyone other than the United States in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States is a party or directly and substantially interested, and which was under his official responsibility as an officer or employee of the Government at any time within a period of one year prior to the termination of such responsibility—

Shall be fined not more than $10,000 or imprisoned for not more than two years, or both: *Provided*, That nothing in subsection (a) or (b) prevents a former officer or employee, including a former special Government employee, with outstanding scientific or technological qualifications from acting as attorney or agent or appearing personally in connection with a particular matter in a scientific or technological field if the head of the department or agency concerned with the matter shall make a certification in writing, published in the Federal Register, that the national interest would be served by such action or appearance by the former officer or employee.

(c) Whoever, being a partner of an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, acts as agent or attorney for anyone other than the United States, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest and in which such officer or employee of the Government or special Government employee participates or has participated personally and substantially as a Government employee through decision, approval, disapproval, recommendation,

the rendering of advice, investigation or otherwise, or which is the subject of his official responsibility—

Shall be fined not more than $5,000, or imprisoned not more than one year, or both.

A partner of a present or former officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia or of a present or former special Government employee shall as such be subject to the provisions of sections 203, 205, and 207 of this title only as expressly provided in subsection (c) of this section. (Added Pub. L. 87–849, § 1(a), Oct. 23, 1962, 76 Stat. 1123.)

TITLE 19.—CUSTOMS DUTIES

Chapter 4.—Tariff Act of 1930

19 U. S. C. 1337. Unfair practices in import trade. (a) Unfair methods of competition declared unlawful. Unfair methods of competition and unfair acts in the importation of articles into the United States, or in their sale by the owner, importer, consignee, or agent of either, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States, or to prevent the establishment of such an industry, or to restrain or monopolize trade and commerce in the United States, are declared unlawful, and when found by the President to exist shall be dealt with, in addition to any other provisions of law, as hereinafter provided. (June 17, 1930, ch. 497, title III, sec. 337, 46 Stat. 703; Proc. No. 2695, July 4, 1946, 11 F. R. 7517, 60 Stat. 1352; Aug. 20, 1958, Pub. L. 85–686, sec. 9 (c) (1), 72 Stat. 679.)

(Paragraphs (b) to (h) state the procedure for preventing importation in violation of this section.)

19 U. S. C. 1337a. Importation of products produced under process covered by claims of unexpired patent. The importation for use, sale, or exchange of a product made, produced, processed, or mined under or by means of a process covered by the claims of any unexpired valid United States letters patent, shall have the same status for the purposes of section 1337 of this title as the importation of any product or article covered by the claims of any unexpired valid United States letters patent. (July 2, 1940, ch. 515, 54 Stat. 724.)

TITLE 21.—FOOD AND DRUGS

Chapter 9.—Federal Food, Drug, and Cosmetic Act

Subchapter VII.—General Administrative Provisions

21 U.S.C. 372. Examinations and Investigations. * * *

(d) Information on patents for drugs.

The Secretary (of Health, Education, and Welfare) is authorized and directed, upon request from the Commissioner of Patents, to furnish full and complete information with respect to such questions relating to drugs

as the Commissioner may submit concerning any patent application. The Secretary is further authorized, upon receipt of any such request, to conduct or cause to be conducted, such research as may be required. (October 10, 1962, Public Law 87-781, title III, sec. 308, 76 Stat. 796.)

TITLE 28.—JUDICIARY AND JUDICIAL PROCEDURE

PART I.—ORGANIZATION OF COURTS

CHAPTER 9.—COURT OF CUSTOMS AND PATENT APPEALS

28 U. S. C. 211. Appointment and number of judges. The President shall appoint, by and with the advice and consent of the Senate, a chief judge and four associate judges who shall constitute a court of record known as the United States Court of Customs and Patent Appeals. Such court is hereby declared to be a court established under article III of the Constitution of the United States. (June 25, 1948, ch. 646, 62 Stat. 899; amended Aug. 25, 1958, Public Law 85-755, sec. 1, 72 Stat. 848.)

See 28 U. S. C. 212-215 for Court of Customs and Patent Appeals, precedence of judges, tenure and salary of judges, sessions, quorum.

28 U. S. C. 216. Opinions. The Court of Customs and Patent Appeals, on each appeal from a Patent Office decision, shall file a written opinion as part of the record and send a certified copy to the Commissioner of Patents who shall record it in the Patent Office. (June 25, 1948, ch. 646, 62 Stat. 899.)

PART III.—COURT OFFICERS AND EMPLOYEES

CHAPTER 53.—COURT OF CUSTOMS AND PATENT APPEALS

28 U. S. C. 833. Reporter. (a) The Court of Customs and Patent Appeals may appoint a reporter who shall be subject to removal by the court.

(b) The reporter shall prepare and transmit: (1) . . .

(2) To the Commissioner of Patents, weekly, for publication, copies of all opinions relating to patent and trade-mark appeals rendered by the court.

(c) The reporter also shall compile and publish, at least once a year, in such manner as the court directs, all opinions rendered by the court during the year, together with necessary digests and indexes as the court directs. (June 25, 1948, ch. 646, 62 Stat. 925.)

PART IV.—JURISDICTION AND VENUE

CHAPTER 83.—COURTS OF APPEALS

28 U. S. C. 1291. Final decisions of district courts. The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for

the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. (June 25, 1948, ch. 646, 62 Stat. 929; Oct. 31, 1951, ch. 655, sec. 48, 65 Stat. 726; July 7, 1958, Pub. L. 85–508, sec. 12 (e), 72 Stat. 348.)

28 U. S. C. 1292. Interlocutory decisions. (a) The courts of appeals shall have jurisdiction of appeals from:

(1) Interlocutory orders of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court; . . .

(4) Judgments in civil actions for patent infringement which are final except for accounting. . . . (June 25, 1948, ch. 646, 62 Stat. 929; Oct. 31, 1951, ch. 655, sec. 49, 65 Stat. 727; July 7, 1958, Pub. L. 85–508, sec. 12 (e), 72 Stat. 348; Sept. 2, 1958, Pub. L. 85–919, 72 Stat. 1770.)

Chapter 85.—District Courts; Jurisdiction

28 U. S. C. 1338. Patents, copyrights, trade-marks and unfair competition. (a) The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, copyrights and trade-marks. Such jurisdiction shall be exclusive of the courts of the states in patent and copyright cases.

(b) The district courts shall have original jurisdiction of any civil action asserting a claim of unfair competition when joined with a substantial and related claim under the copyright, patent or trade-mark laws. (June 25, 1948, ch. 646, 62 Stat. 931.)

Chapter 87.—District Courts; Venue

28 U. S. C. 1400. Patents and copyrights. (a) (Copyrights). (b) Any civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business. (June 25, 1948, ch. 646, 62 Stat. 936.)

Chapter 91.—Court of Claims

28 U. S. C. 1498. Patent cases. (a) Whenever an invention described in and covered by a patent of the United States is used or manufactured by or for the United States without license of the owner thereof or lawful right to use or manufacture the same, the owner's remedy shall be by action against the United States in the Court of Claims for the recovery of his reasonable and entire compensation for such use and manufacture.

For the purposes of this section, the use or manufacture of an invention

described in and covered by a patent of the United States by a contractor, a subcontractor, or any person, firm, or corporation for the Government and with the authorization or consent of the Government, shall be construed as use or manufacture for the United States.

The court shall not award compensation under this section if the claim is based on the use or manufacture by or for the United States of any article owned, leased, used by, or in the possession of the United States prior to July 1, 1918.

A Government employee shall have the right to bring suit against the Government under this section except where he was in a position to order, influence, or induce use of the invention by the Government. This section shall not confer a right of action on any patentee or any assignee of such patentee with respect to any invention discovered or invented by a person while in the employment or service of the United States, where the invention was related to the official functions of the employee, in cases in which such functions included research and development, or in the making of which Government time, materials or facilities were used.

(b) [Deals with copyrights.]

(c) The provisions of this section shall not apply to any claim arising in a foreign country. (June 25, 1948, ch. 646, 62 Stat. 941; May 24, 1949, ch. 139, sec. 87, 63 Stat. 102; Oct. 31, 1951, ch. 655, sec. 50 (c), 65 Stat. 727; July 17, 1952, ch. 930, 66 Stat. 757; Sept. 8, 1960, Pub. L. 86–726, 74 Stat. 855.)

Chapter 93.—Court of Customs and Patent Appeals

28 U. S. C. 1542. Patent Office decisions. The Court of Customs and Patent Appeals shall have jurisdiction of appeals from decisions of:

(1) the Board of Appeals and the Board of Interference Examiners of the Patent Office as to patent applications and interferences, at the instance of an applicant for a patent or any party to a patent interference, and such appeal by an applicant shall waive his right to proceed under section 63 of Title 35; and

(2) the Commissioner of Patents as to trade-mark applications and proceedings as provided in section 1071 of Title 15. (June 25, 1948, ch. 646, 62 Stat. 942; May 24, 1949, ch. 139, sec. 89 (b), 63 Stat. 102.)

Part V.—Procedure

Chapter 113.—Process

28 U. S. C. 1694. Patent infringement action. In a patent infringement action commenced in a district where the defendant is not a resident but has a regular and established place of business, service of process, summons or subpoena upon such defendant may be made upon his agent or agents conducting such business. (June 25, 1948, ch. 646, 62 Stat. 945.)

28 U. S. C. 1733. Government records and papers; copies. (a) Books or records of account or minutes of proceedings of any department or agency of the United States shall be admissible to prove the act, transaction or occurrence as a memorandum of which the same were made or kept.

(b) Properly authenticated copies or transcripts of any books, records, papers or documents of any department or agency of the United States shall be admitted in evidence equally with the originals thereof. (June 25, 1948, ch. 646, 62 Stat. 946.)

28 U.S.C. 1741. Foreign official documents. An official record or document of a foreign country may be evidenced by a copy, summary, or excerpt authenticated as provided in the Federal Rules of Civil Procedure. (June 25, 1948, ch. 646, 62 Stat. 948; May 24, 1949, ch. 139, § 92(b), 63 Stat. 103; Oct. 3, 1964, Pub. L. 88–619, § 5(a), 78 Stat. 996.)

28 U. S. C. 1744. Copies of Patent Office documents, generally. Copies of letters patent or of any records, books, papers, or drawings belonging to the Patent Office and relating to patents, authenticated under the seal of the Patent Office and certified by the Commissioner of Patents, or by another officer of the Patent Office authorized to do so by the Commissioner, shall be admissible in evidence with the same effect as the originals.

Any person making application and paying the required fee may obtain such certified copies. (June 25, 1948, ch. 646, 62 Stat. 948; May 24, 1949, ch. 139, sec. 92 (c), 63 Stat. 103.)

28 U.S.C. 1745. Copies of foreign patent documents. Copies of specifications and drawings of foreign letters patent, or applications for foreign letters patent, and copies of excerpts of the official journals and other official publications of foreign patent offices belonging to the United States Patent Office, certified in the manner provided by section 1744 of this title are prima facie evidence of their contents and of the dates indicated on their face. (June 25, 1948, ch. 646, 62 Stat. 948; May 24, 1949, ch. 139, § 92 (d), (e), 63 Stat. 103; Oct. 3, 1964, Pub. L. 88–619, § 7(a), 78 Stat. 996.)

28 U.S.C. 1781. Transmittal of letter rogatory or request. (a) The Department of State has power, directly, or through suitable channels—

(1) to receive a letter rogatory issued, or request made, by a foreign or international tribunal, to transmit it to the tribunal, officer, or agency in the United States to whom it is addressed, and to receive and return it after execution; and

(2) to receive a letter rogatory issued, or request made, by a tribunal in the United States, to transmit it to the foreign or international tribunal, officer, or agency to whom it is addressed, and to receive and return it after execution.

(b) This section does not preclude—

(1) the transmittal of a letter rogatory or request directly from a foreign or international tribunal to the tribunal, officer, or agency in the United States to whom it is addressed and its return in the same manner; or

(2) the transmittal of a letter rogatory or request directly from a tribunal in the United States to the foreign or international tribunal, officer, or agency to whom it is addressed and its return in the same manner.

(June 25, 1948, ch. 646, 62 Stat. 948; Oct. 3, 1964, Pub. L. 88–619, 18(a), 78 Stat. 996.)

Chapter 123.—Fees and Costs

28 U. S. C. 1926. Court of Customs and Patent Appeals. Fees and costs in the Court of Customs and Patent Appeals shall be fixed by a table of fees adopted by such court and approved by the Supreme Court. The fees and costs so fixed shall not, with respect to any item, exceed the fees and costs charged in the Supreme Court, and shall be accounted for and paid over to the Treasury. (June 25, 1948, ch. 646, 62 Stat. 957.)

28 U. S. C. 1928. Patent infringement action; disclaimer not filed. Whenever a judgment is rendered for the plaintiff in any patent infringement action involving a part of a patent and it appears that the patentee, in his specifications, claimed to be, but was not, the original and first inventor or discoverer of any material or substantial part of the thing patented, no costs shall be included in such judgment, unless the proper disclaimer has been filed in the Patent Office prior to the commencement of the action. (June 25, 1948, ch. 646, 62 Stat. 957.)

TITLE 42.—THE PUBLIC HEALTH AND WELFARE

Chapter 16.—National Science Foundation

42 U. S. C. 1871. Patent rights; protection of public interest or equities of individuals or organizations; employees barred. (a) Each contract or other arrangement executed pursuant to this chapter which relates to scientific research shall contain provisions governing the disposition of inventions produced thereunder in a manner calculated to protect the public interest and the equities of the individual or organization with which the contract or other arrangement is executed: *Provided, however,* That nothing in this chapter shall be construed to authorize the Foundation to enter into any contractual or other arrangement inconsistent with any provision of law affecting the issuance or use of patents.

(b) No officer or employee of the Foundation shall acquire, retain, or transfer any rights, under the patent laws of the United States or otherwise, in any invention which he may make or produce in connection with performing his assigned activities and which is directly related to the subject matter thereof: *Provided, however,* That this subsection shall not be construed to prevent any officer or employee of the Foundation from executing any

application for patent on any such invention for the purpose of assigning the same to the Government or its nominee in accordance with such rules and regulations as the Director may establish. (May 10, 1950, ch. 171, sec. 12, 64 Stat. 154.)

Chapter 23.—Development and Control of Atomic Energy (Atomic Energy Act of 1954)

Subchapter 1.—General Provisions

42 U. S. C. 2014. Definitions. The intent of Congress in the definitions as given in this section should be construed from the words or phrases used in the definitions. As used in this chapter: * * *

(c) The term "atomic energy" means all forms of energy released in the course of nuclear fission or nuclear transformation.

(d) The term "atomic weapon" means any device utilizing atomic energy, exclusive of the means for transporting or propelling the device (where such means is a separable and divisible part of the device), the principal purpose of which is for use as, or for development of, a weapon, a weapon prototype, or a weapon test device. * * *

(s) The term "produce", when used in relation to special nuclear material, means (1) to manufacture, make, produce, or refine special nuclear material; (2) to separate special nuclear material from other substances in which such material may be contained; or (3) to make or to produce new special nuclear material. * * *

(x) The term "source material" means (1) uranium, thorium, or any other material which is determined by the Commission pursuant to the provisions of section 2091 of this title to be source material; or (2) ores containing one or more of the foregoing materials, in such concentration as the Commission may by regulation determine from time to time.

(y) The term "special nuclear material" means (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of section 2071 of this title, determines to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material. * * * (Aug. 1, 1946, ch. 724, sec. 11, as added Aug. 30, 1954, ch. 1073, sec. 1, 68 Stat. 922, and amended Aug. 6, 1956, ch. 1015, sec. 1, 70 Stat. 1069; Sept. 2, 1957, Pub. L. 85-256, sec. 3, 71 Stat. 576; Aug. 8, 1958, Pub. L. 85-602, sec. 1, 72 Stat. 525.)

Subchapter XII.—Patents and Inventions

42 U.S.C. 2181. Inventions Relating to Atomic Weapons, and Filing of Reports. (a) *Denial of patent; revocation of prior patents.* No patent shall hereafter be granted for any invention or discovery which is useful solely in the utilization of special nuclear material or atomic energy in an atomic weapon. Any patent granted for any such invention or discovery is revoked, and just compensation shall be made therefor.

(b) *Denial of rights; revocation of prior rights.* No patent hereafter granted shall confer any rights with respect to any invention or discovery to the extent that such invention or discovery is used in the utilization of special nuclear material or atomic energy in atomic weapons. Any rights conferred by any patent heretofore granted for any invention or discovery are revoked to the extent that such invention or discovery is so used, and just compensation shall be made therefor.

(c) *Report of invention to Commissioner of Patents.* Any person who has made or hereafter makes any invention or discovery useful in the production or utilization of special nuclear material or atomic energy, shall file with the Commission a report containing a complete description thereof unless such invention or discovery is described in an application for a patent filed with the Commissioner of Patents by such person within the time required for the filing of such report. The report covering any such invention or discovery shall be filed on or before the one hundred and eightieth day after such person first discovers or first has reason to believe that such invention or discovery is useful in such production or utilization.

(d) *Report to Commission by Commissioner of Patents.* The Commissioner of Patents shall notify the Commission of all applications for patents heretofore or hereafter filed which, in his opinion, disclose inventions or discoveries required to be reported under subsection (c) of this section, and shall provide the Commission access to all such applications.

(e) *Confidential information; circumstances permitting disclosure.*

Reports filed pursuant to subsection (c) of this section, and applications to which access is provided under subsection (d) of this section, shall be kept in confidence by the Commission, and no information concerning the same given without authority of the inventor or owner unless necessary to carry out the provisions of any Act of Congress or in such special circumstances as may be determined by the Commission. (Aug. 1, 1946, ch. 724, sec. 151, as added Aug. 30, 1954, ch. 1073, sec. 1, 68 Stat. 943; as amended Sept. 6, 1961, Pub. L. 87–206, secs. 7, 8, 9, 75 Stat. 477.)

42 U.S.C. 2182. Inventions conceived during Commission contracts; ownership; waiver; hearings. Any invention or discovery, useful in the production or utilization of special nuclear material or atomic energy, made or conceived in the course of or under any contract, subcontract, or arrangement entered into with or for the benefit of the Commission, regardless of whether the contract, subcontract, or arrangement involved the expenditure of funds by the Commission, shall be vested in, and be the property of, the Commission, except that the Commission may waive its claim to any such invention or discovery under such circumstances as the Commission may deem appropriate, consistent with the policy of this section. No patent for any invention or discovery, useful in the production or utilization of special nuclear material or atomic energy, shall be issued unless the applicant files with the application, or within thirty days after request therefor by the Commissioner of Patents (unless the Commission advises the Commissioner of Patents that its rights have been

determined and that accordingly no statement is necessary) a statement under oath setting forth the full facts surrounding the making or conception of the invention or discovery described in the application and whether the invention or discovery was made or conceived in the course of or under any contract, subcontract, or arrangement entered into with or for the benefit of the Commission, regardless of whether the contract, subcontract, or arrangement involved the expenditure of funds by the Commission. The Commissioner of Patents shall as soon as the application is otherwise in condition for allowance forward copies of the application and the statement to the Commission.

The Commissioner of Patents may proceed with the application and issue the patent to the applicant (if the invention or discovery is otherwise patentable) unless the Commission, within 90 days after receipt of copies of the application and statement, directs the Commissioner of Patents to issue the patent to the Commission (if the invention or discovery is otherwise patentable) to be held by the Commission as the agent of and on behalf of the United States.

If the Commission files such a direction with the Commissioner of Patents, and if the applicant's statement claims, and the applicant still believes, that the invention or discovery was not made or conceived in the course of or under any contract, subcontract or arrangement entered into with or for the benefit of the Commission entitling the Commission to the title to the application or the patent the applicant may, within 30 days after notification of the filing of such a direction, request a hearing before a Board of Patent Interferences. The Board shall have the power to hear and determine whether the Commission was entitled to the direction filed with the Commissioner of Patents. The Board shall follow the rules and procedures established for interference cases and an appeal may be taken by either the applicant or the Commission from the final order of the Board to the Court of Customs and Patent Appeals in accordance with the procedures governing the appeals from the Board of Patent Interferences.

If the statement filed by the applicant should thereafter be found to contain false material statements any notification by the Commission that it has no objections to the issuance of a patent to the applicant shall not be deemed in any respect to constitute a waiver of the provisions of this section or of any applicable civil or criminal statute, and the Commission may have the title to the patent transferred to the Commission on the records of the Commissioner of Patents in accordance with the provisions of this section. A determination of rights by the Commission pursuant to a contractual provision or other arrangement prior to the request of the Commissioner of Patents for the statement, shall be final in the absence of false material statements or nondisclosure of material facts by the applicant. (Aug. 1, 1946, ch. 724, § 152, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 944; as amended Sept. 6, 1961, Pub. L. 87–206, § 10, 75 Stat. 477; Aug. 29, 1962, Pub. L. 87–615, § 11, 76 Stat. 411.)

42 U. S. C. 2183. Nonmilitary utilization. (a) *Declaration of public interest.* The Commission may, after giving the patent owner an opportunity for a hearing, declare any patent to be affected with the public interest if (1) the invention or discovery covered by the patent is of primary importance in the production or utilization of special nuclear material or atomic energy; and (2) the licensing of such invention or discovery under this section is of primary importance to effectuate the policies and purposes of this chapter.

(b) *Action by Commission.* Whenever any patent has been declared affected with the public interest, pursuant to subsection (a) of this section—

(1) the Commission is hereby licensed to use the invention or discovery covered by such patent in performing any of its powers under this chapter; and

(2) any person may apply to the Commission for a nonexclusive patent license to use the invention or discovery covered by such patent, and the Commission shall grant such patent license to the extent that it finds that the use of the invention or discovery is of primary importance to the conduct of an activity by such person authorized under this chapter.

(c) *Application for patent.* Any person—

(1) who has made application to the Commission for a license under sections 2073, 2092, 2093, 2111, 2133 or 2134 of this title, or a permit or lease under section 2097 of this title;

(2) to whom such license, permit, or lease has been issued by the Commission;

(3) who is authorized to conduct such activities as such applicant is conducting or proposes to conduct under a general license issued by the Commission under sections 2092 or 2111 of this title; or

(4) whose activities or proposed activities are authorized under section 2051 of this title,

may at any time make application to the Commission for a patent license for the use of an invention or discovery useful in the production or utilization of special nuclear material or atomic energy covered by a patent. Each such application shall set forth the nature and purpose of the use which the applicant intends to make of the patent license, the steps taken by the applicant to obtain a patent license from the owner of the patent, and a statement of the effects, as estimated by the applicant, on the authorized activities which will result from failure to obtain such patent license and which will result from the granting of such patent license.

(d) *Hearings.* Whenever any person has made an application to the Commission for a patent license pursuant to subsection (c) of this section—

(1) the Commission, within 30 days after the filing of such application, shall make available to the owner of the patent all of the information contained in such application, and shall notify the owner of the patent of the time and place at which a hearing will be held by the Commission;

(2) the Commission shall hold a hearing within 60 days after the filing of such application at a time and place designated by the Commission; and

(3) in the event an applicant applies for two or more patent licenses, the Commission may, in its discretion, order the consolidation of such applications, and if the patents are owned by more than one owner, such owners may be made parties to one hearing.

(e) *Commission's findings.* If, after any hearing conducted pursuant to subsection (d) of this section, the Commission finds that—

(1) the invention or discovery covered by the patent is of primary importance in the production or utilization of special nuclear material or atomic energy;

(2) the licensing of such invention or discovery is of primary importance to the conduct of the activities of the applicant;

(3) the activities to which the patent license are proposed to be applied by such applicant are of primary importance to the furtherance of policies and purposes of this chapter; and

(4) such applicant cannot otherwise obtain a patent license from the owner of the patent on terms which the Commission deems to be reasonable for the intended use of the patent to be made by such applicant,

the Commission shall license the applicant to use the invention or discovery covered by the patent for the purposes stated in such application on terms deemed equitable by the Commission and generally not less fair than those granted by the patentee or by the Commission to similar licensees for comparable use.

(f) *Limitations on issuance of patent.* The Commission shall not grant any patent license pursuant to subsection (e) of this section for any other purpose than that stated in the application. Nor shall the Commission grant any patent license to any other applicant for a patent license on the same patent without an application being made by such applicant pursuant to subsection (c) of this section, and without separate notification and hearing as provided in subsection (d) of this section, and without a separate finding as provided in subsection (e) of this section.

(g) *Royalty fees.* The owner of the patent affected by a declaration or a finding made by the Commission pursuant to subsection (b) or (e) of this section shall be entitled to a reasonable royalty fee from the licensee for any use of an invention or discovery licensed by this section. Such royalty fee may be agreed upon by such owner and the patent licensee, or in the absence of such agreement shall be determined for each patent license by the Commission pursuant to section 2187 (c) of this title.

(h) *Effective period.* The provisions of this section shall apply to any patent the application for which shall have been filed before September 1, 1969. (Aug. 1, 1946, ch. 724, sec. 153, as added Aug. 30, 1954, ch. 1073, sec. 1, 68 Stat. 945; amended June 23, 1959, Public Law 86–50, sec. 114, 73 Stat. 87; amended Aug. 1, 1964, Public Law 88–394, sec. 1, 78 Stat. 376.)

42 U. S. C. 2184. Injunctions; measure of damages. No court shall have jurisdiction or power to stay, restrain, or otherwise enjoin the use of any invention or discovery by a patent licensee, to the extent that such use is licensed by section 2183 (b) or 2183 (e) of this title. If, in any action against such patent licensee, the court shall determine that the defendant is exercising such license, the measure of damages shall be the royalty fee determined pursuant to section 2187 (c) of this title, together with such costs, interest, and reasonable attorney's fees as may be fixed by the court. If no royalty fee has been determined, the court shall stay the proceeding until the royalty fee is determined pursuant to section 2187 (c) of this title. If any such patent licensee shall fail to pay such royalty fee, the patentee may bring an action in any court of competent jurisdiction for such royalty fee, together with such costs, interest, and reasonable attorney's fees as may be fixed by the court. (Aug. 1, 1946, ch. 724, sec. 154, as added Aug. 30, 1954, ch. 1073, sec. 1, 68 Stat. 946.)

42 U. S. C. 2185. Prior Art. In connection with applications for patents covered by this subchapter, the fact that the invention or discovery was known or used before shall be a bar to the patenting of such invention or discovery even though such prior knowledge or use was under secrecy within the atomic energy program of the United States. (Aug. 1, 1946, ch. 724, sec. 155, as added Aug. 30, 1954, ch. 1073, sec. 1, 68 Stat. 947.)

42 U. S. C. 2186. Commission patent licenses. The Commission shall establish standard specifications upon which it may grant a patent license to use any patent held by the Commission or declared to be affected with the public interest pursuant to section 2183 (a) of this title. Such a patent license shall not waive any of the other provisions of this chapter. (Aug. 1, 1946, ch. 724, sec. 156, as added Aug. 30, 1954, ch. 1073, sec. 1, 68 Stat. 947.)

42 U. S. C. 2187. Compensation, awards, and royalties. (a) PATENT COMPENSATION BOARD.—The Commission shall designate a Patent Compensation Board to consider applications under this section. The members of the Board shall receive a per diem compensation for each day spent in meetings or conferences, and all members shall receive their necessary traveling or other expenses while engaged in the work of the Board. The members of the Board may serve as such without regard to the provisions of sections 281, 283, or 284 of Title 18, except insofar as such sections may prohibit any such member from receiving compensation in respect of any particular matter which directly involves the Commission or in which the Commission is directly interested.

(b) ELIGIBILITY.—

(1) Any owner of a patent licensed under section 2188 or 2183 (b) or 2183 (e) of this title, or any patent licensee thereunder may make application to the Commission for the determination of a reasonable royalty fee in accordance with such procedures as the Commission by regulation may establish.

(2) Any person seeking to obtain the just compensation provided in section 2181 of this title shall make application therefor to the Commission in accordance with such procedures as the Commission may by regulation establish.

(3) Any person making any invention or discovery useful in the production or utilization of special nuclear material or atomic energy, who is not entitled to compensation or a royalty therefor under this chapter and who has complied with the provisions of section 2181 (c) of this title may make application to the Commission for, and the Commission may grant, an award. The Commission may a'so, upon the recommendation of the General Advisory Committee, and with the approval of the President, grant an award for any especially meritorious contribution to the development, use, or control of atomic energy.

(c) STANDARDS.—

(1) In determining a reasonable royalty fee as provided for in section 2183 (b) or 2183 (e) of this title, the Commission shall take into consideration (A) the advice of the Patent Compensation Board; (B) any defense, general or special, that might be pleaded by a defendant in an action for infringement; (C) the extent to which, if any, such patent was developed through federally financed research; and (D) the degree of utility, novelty, and importance of the invention or discovery, and may consider the cost to the owner of the patent of developing such invention or discovery or acquiring such patent.

(2) In determining what constitutes just compensation as provided foı in section 2181 of this title, or in determining the amount of any award under subsection (b) (3) of this section, the Commission shall take into account the considerations set forth in paragraph 1 of this subsection and the actual use of such invention or discovery. Such compensation may be paid by the Commission in periodic payments or in a lump sum.

(d) PERIOD OF LIMITATIONS.—

Every application under this section shall be barred unless filed within six years after the date on which first accrues the right to such reasonable royalty fee, just compensation, or award for which such application is filed. (Aug. 1, 1946, ch. 724, sec. 157, as added Aug. 30, 1954, ch. 1073, sec. 1, 68 Stat. 947; amended Sept. 6, 1961, Public Law 87-206, sec. 11, 78 Stat. 478.)

42 U.S.C. 2188. Monopolistic use of patents. Whenever the owner of any patent hereafter granted for any invention or discovery of primary use in the utilization or production of special nuclear material or atomic energy is found by a court of competent jurisdiction to have intentionally used such patent in a manner so as to violate any of the antitrust laws specified in section 2135(a) of this title, there may be included in the judgment of the court, in its discretion and in addition to any other lawful sanctions, a requirement that such owner license such patent to any other licensee of the Commission who demonstrates a need therefor. If the court, at its discretion, deems that such licensee shall pay a reasonable

royalty to the owner of the patent, the reasonable royalty shall be determined in accordance with section 2187 of this title. (Aug. 1, 1946, ch. 724, sec. 158, as added Aug. 30, 1954, ch. 1073, sec. 1, 68 Stat. 947; amended Sept. 6, 1961, Public Law 87–206, sec. 12, 78 Stat. 478.)

42 U. S. C. 2189. **Federally financed research.** Nothing in this chapter shall affect the right of the Commission to require that patents granted on inventions, made or conceived during the course of federally financed research or operations, be assigned to the United States. (Aug. 1, 1946, ch. 724, sec. 159, as added Aug. 30, 1954, ch. 1073, sec. 1, 68 Stat. 948.)

42 U. S. C. 2190. **Saving clause for prior patent applications.** Any patent application on which a patent was denied by the United States Patent Office under sections 11 (a) (1), 11 (a) (2), or 11 (b) of the Atomic Energy Act of 1946, and which is not prohibited by section 2181 or 2185 of this title may be reinstated upon application to the Commissioner of Patents within one year after August 30, 1954, and shall then be deemed to have been continuously pending since its original filing date: *Provided, however,* That no patent issued upon any patent application so reinstated shall in any way furnish a basis of claim against the Government of the United States. (Aug. 1, 1946, ch. 724, sec. 160, as added Aug. 30, 1954, ch. 1073, sec. 1, 68 Stat. 948.)

Subchapter XIV.—Compensation for Private Property Acquired

42 U. S. C. 2223. **Patent application disclosures.** In the event that the Commission communicates to any nation any Restricted Data based on any patent application not belonging to the United States, just compensation shall be paid by the United States to the owner of the patent application. The Commission shall determine such compensation. If the compensation so determined is unsatisfactory to the person entitled thereto, such person shall be paid 75 per centum of the amount so determined, and shall be entitled to sue the United States in the Court of Claims or in any district court of the United States for the district in which such claimant is a resident in a manner provided by section 1346 of Title 28 to recover such further sum as added to such 75 per centum will constitute just compensation. (Aug. 1, 1946, ch. 724, sec. 174, as added Aug. 30, 1954, ch. 1073, 68 Stat. 953.)

Chapter 26.—National Space Program (National Aeronautics and Space Act of 1958)

Subchapter I.—General Provisions

42 U. S. C. 2457. **Property rights in inventions.** (a) *Exclusive property of United States; issuance of patent.* Whenever any invention is made in the

performance of any work under any contract of the Administration, and the Administrator determines that—

(1) the person who made the invention was employed or assigned to perform research, development, or exploration work and the invention is related to the work he was employed or assigned to perform, or that it was within the scope of his employment duties, whether or not it was made during working hours, or with a contribution by the Government of the use of Government facilities, equipment, materials, allocated funds, information proprietary to the Government, or services of Government employees during working hours; or

(2) the person who made the invention was not employed or assigned to perform research, development, or exploration work, but the invention is nevertheless related to the contract, or to the work or duties he was employed or assigned to perform, and was made during working hours, or with a contribution from the Government of the sort referred to in clause (1),

such invention shall be the exclusive property of the United States, and if such invention is patentable a patent therefor shall be issued to the United States upon application made by the Administrator, unless the Administrator waives all or any part of the rights of the United States to such invention in conformity with the provisions of subsection (f) of this section.

(b) *Contract provisions for furnishing reports of inventions, discoveries, improvements, or innovations.* Each contract entered into by the Administrator with any party for the performance of any work shall contain effective provisions under which such party shall furnish promptly to the Administrator a written report containing full and complete technical information concerning any invention, discovery, improvement, or innovation which may be made in the performance of any such work.

(c) *Patent application.* No patent may be issued to any applicant other than the Administrator for any invention which appears to the Commissioner of Patents to have significant utility in the conduct of aeronautical and space activities unless the applicant files with the Commissioner, with the application or within thirty days after request therefor by the Commissioner, a written statement executed under oath setting forth the full facts concerning the circumstances under which such invention was made and stating the relationship (if any) of such invention to the performance of any work under any contract of the Administration. Copies of each such statement and the application to which it relates shall be transmitted forthwith by the Commissioner to the Administrator.

(d) *Issuance of patent to applicant; request by Administrator; notice; hearing; determination; review.* Upon any application as to which any such statement has been transmitted to the Administrator, the Commissioner may, if the invention is patentable, issue a patent to the applicant unless the Administrator, within ninety days after receipt of such application and statement, requests that such patent be issued to him on behalf of the United States.

If, within such time, the Administrator files such a request with the Commissioner, the Commissioner shall transmit notice thereof to the applicant, and shall issue such patent to the Administrator unless the applicant within thirty days after receipt of such notice requests a hearing before a Board of Patent Interferences on the question whether the Administrator is entitled under this section to receive such patent. The Board may hear and determine, in accordance with rules and procedures established for interference cases, the question so presented, and its determination shall be subject to appeal by the applicant or by the Administrator to the Court of Customs and Patent Appeals in accordance with procedures governing appeals from decisions of the Board of Patent Interferences in other proceedings.

(e) *False representations; request for transfer of title to patent; notice; hearing; determination; review.* Whenever any patent has been issued to any applicant in conformity with subsection (d) of this section, and the Administrator thereafter has reason to believe that the statement filed by the applicant in connection therewith contained any false representation of any material fact, the Administrator within five years after the date of issuance of such patent may file with the Commissioner a request for the transfer to the Administrator of title to such patent on the records of the Commissioner. Notice of any such request shall be transmitted by the Commissioner to the owner of record of such patent, and title to such patent shall be so transferred to the Administrator unless within thirty days after receipt of such notice such owner of record requests a hearing before a Board of Patent Interferences on the question whether any such false representation was contained in such statement. Such question shall be heard and determined, and determination thereof shall be subject to review, in the manner prescribed by subsection (d) of this section for questions arising thereunder. No request made by the Administrator under this subsection for the transfer of title to any patent, and no prosecution for the violation of any criminal statute, shall be barred by any failure of the Administrator to make a request under subsection (d) of this section for the issuance of such patent to him, or by any notice previously given by the Administrator stating that he had no objection to the issuance of such patent to the applicant therefor.

(f) *Waiver of rights to inventions; Inventions and Contributions Board.* Under such regulations in conformity with this subsection as the Administrator shall prescribe, he may waive all or any part of the rights of the United States under this section with respect to any invention or class of inventions made or which may be made by any person or class of persons in the performance of any work required by any contract of the Administration if the Administrator determines that the interests of the United States will be served thereby. Any such waiver may be made upon such terms and under such conditions as the Administrator shall determine to be required for the protection of the interests of the United States. Each such waiver made with respect to any invention shall be subject to the reservation by the Administrator of an irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of such invention throughout the world

by or on behalf of the United States or any foreign government pursuant to any treaty or agreement with the United States. Each proposal for any waiver under this subsection shall be referred to an Inventions and Contributions Board which shall be established by the Administrator within the Administration. Such Board shall accord to each interested party an opportunity for hearing, and shall transmit to the Administrator its findings of fact with respect to such proposal and its recommendations for action to be taken with respect thereto.

(g) *License regulations.* The Administrator shall determine, and promulgate regulations specifying, the terms and conditions upon which licenses will be granted by the Administration for the practice by any person (other than an agency of the United States) of any invention for which the Administrator holds a patent on behalf of the United States.

(h) *Protection of title.* The Administrator is authorized to take all suitable and necessary steps to protect any invention or discovery to which he has title, and to require that contractors or persons who retain title to inventions or discoveries under this section protect the inventions or discoveries to which the Administration has or may acquire a license of use.

(i) *Administration as defense agency.* The Administration shall be considered a defense agency of the United States for the purpose of chapter 17 of Title 35.

(j) *Definitions.* As used in this section—

(1) the term "person" means any individual, partnership, corporation, association, institution, or other entity;

(2) the term "contract" means any actual or proposed contract, agreement, understanding, or other arrangement, and includes any assignment, substitution of parties, or subcontract executed or entered into thereunder; and

(3) the term "made", when used in relation to any invention, means the conception or first actual reduction to practice of such invention.

(Pub. L. 85–568, title III, sec. 305, July 29, 1958, 72 Stat. 435.)

42 U. S. C. 2458. Contributions awards. (a) *Applications; referral to Board; hearing; recommendations; determination by Administrator.* Subject to the provisions of this section, the Administrator is authorized, upon his own initiative or upon application of any person, to make a monetary award, in such amount and upon such terms as he shall determine to be warranted, to any person (as defined by section 2457 of this title) for any scientific or technical contribution to the Administration which is determined by the Administrator to have significant value in the conduct of aeronautical and space activities. Each application made for any such award shall be referred to the Inventions and Contributions Board established under section 2457 of this title. Such Board shall accord to each such applicant an opportunity for hearing upon such application, and shall transmit to the Administrator its recommendation as to the terms of the award, if any, to be made to such applicant for such contribution. In determining the terms and conditions of any award the Administrator shall take into account—

(1) the value of the contribution to the United States;

(2) the aggregate amount of any sums which have been expended by the applicant for the development of such contribution;

(3) the amount of any compensation (other than salary received for services rendered as an officer or employee of the Government) previously received by the applicant for or on account of the use of such contribution by the United States; and

(4) such other factors as the Administrator shall determine to be material.

(b) *Apportionment of awards; surrender of claims to compensation; limitation on amount; reports to Congressional Committees.* If more than one applicant under subsection (a) of this section claims an interest in the same contribution, the Administrator shall ascertain and determine the respective interests of such applicants, and shall apportion any award to be made with respect to such contribution among such applicants in such proportions as he shall determine to be equitable. No award may be made under subsection (a) of this section with respect to any contribution—

(1) unless the applicant surrenders, by such means as the Administrator shall determine to be effective, all claims which such applicant may have to receive any compensation (other than the award made under this section) for the use of such contribution or any element thereof at any time by or on behalf of the United States, or by or on behalf of any foreign government pursuant to any treaty or agreement with the United States, within the United States or at any other place;

(2) in any amount exceeding $100,000, unless the Administrator has transmitted to the appropriate committees of the Congress a full and complete report concerning the amount and terms of, and the basis for, such proposed award, and thirty calendar days of regular session of the Congress have expired after receipt of such report by such committees.

(Pub. L. 85-568, title III, sec. 306, July 29, 1958, 72 Stat. 437.)

TITLE 48.—TERRITORIES AND INSULAR POSSESSIONS

Chapter 4.—Puerto Rico

48 U.S.C. 734. United States laws extended to Puerto Rico; * * *. The statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Puerto Rico as in the United States, * * *. (Mar. 2, 1917, ch. 145, sec. 9, 39 Stat. 954; May 17, 1932, ch. 190, 47 Stat. 158; Apr. 30, 1946, ch. 244, title V, sec. 513, 60 Stat. 158; Aug. 1, 1955, ch. 438, title III, sec. 308, 69 Stat. 427.)

Chapter 6.—Canal Zone

Note.—Act June 19, 1934, ch. 667, 48 Stat. 1122, enacted the "Canal Zone Code" to establish conclusively and be deemed to embrace all the permanent laws relating to or applying in the Canal Zone in force on date of enactment of the Code.

Public Law 87–845, approved October 18, 1962, revises and codifies the general and permanent laws relating to and in force in the Canal Zone and enacts the Canal Zone Code.

Title 4—Civil Laws; Chapter 19, Personal Property; subchapter III; sections 441–446 relate to products of the mind, and refer to inventions or designs, copyrights, etc.

Subchapter IV—Patents, Trademarks and Copyrights, section 471, provides:

"§ 471. Laws extended to the Canal Zone

"The patent, trademark, and copyright laws of the United States have the same force and effect in the Canal Zone as in the continental United States, and the district court has the same jurisdiction in actions arising under those laws as is exercised by the United States district courts."

Chapters 7 and 12.—The Virgin Islands

48 U. S. C. 1405q. * * * Patent, trade-mark, and copyright laws extended to Islands * * *. The laws of the United States relating to patents, trade marks, and copyrights, and to the enforcement of rights arising thereunder, shall have the same force and effect in the Virgin Islands as in the continental United States, and the District Court of the Virgin Islands shall have the same jurisdiction in causes arising under such laws as is exercised by United States district courts. (June 22, 1936, ch. 699, sec. 18, 49 Stat. 1811.)

48 U. S. C. 1574 (c). Legislative powers and activities. Applicability of laws and ordinances; amendment or repeal.

The laws of the United States applicable to the Virgin Islands on July 22, 1954, including laws made applicable to the Virgin Islands by or pursuant to the provisions of the Act of June 22, 1936 (49 Stat. 1807), and all local laws and ordinances in force in the Virgin Islands, or any part thereof, on July 22, 1954 shall, to the extent they are not inconsistent with this chapter, continue in force and effect until otherwise provided by the Congress: * * *. (July 22, 1954, ch. 558, sec. 8, 68 Stat. 500; Aug. 28, 1958, Pub. L. 85–851, secs. 2, 3, 10, 72 Stat. 1094, 1095.)

Note.—See 48 U. S. C. 1643 relating to the non-applicability of certain provisions of the trademark law.

Chapter 8A.—Guam

48 U. S. C. 1421c. Certain laws continued in force; modification or repeal of laws; applicability of Act of Congress.

(a) The laws of Guam in force on August 1, 1950, except as amended by this chapter, are continued in force, subject to modification or repeal by the Congress of the United States or the Legislature of Guam, and all laws of Guam inconsistent with the provisions of this chapter are repealed to the extent of such inconsistency.

(b) Except as otherwise provided in this chapter, no law of the United States hereafter enacted shall have any force or effect within Guam unless specifically made applicable by Act of the Congress either by reference to Guam by name or by reference to "possessions". * * * (Aug. 1, 1950, ch. 512, sec. 25, 64 Stat. 390.)

NOTE.—See 35 U. S. C. 100 (c).

TITLE 50.—WAR AND NATIONAL DEFENSE

CHAPTER 10.—HELIUM GAS

50 U. S. C. 167b. Production of helium; maintenance and operation of facilities; research. [Disposition of patents.] The Secretary is authorized to maintain and operate helium production and purification plants together with facilities and accessories thereto; to acquire, store, transport, sell, and conserve helium, helium-bearing natural gas, and helium-gas mixtures, to conduct exploration for and production of helium on and from the lands acquired, leased, or reserved; and to conduct or contract with public or private parties for experimentation and research to discover helium supplies and to improve processes and methods of helium production, purification, transportation, liquefaction, storage, and utilization: *Provided, however*, That all research contracted for, sponsored, cosponsored, or authorized under authority of this Act shall be provided for in such a manner that all information, uses, products, processes, patents and other developments resulting from such research developed by Government expenditure will (with such exceptions and limitations, if any, as the Secretary may find to be necessary in the interest of national defense) be available to the general public: *And provided further*, That nothing contained herein shall be construed as to deprive the owner of any background patent relating thereto to such rights as he may have thereunder. (Mar. 3, 1925, ch. 426, § 4, as renumbered Sept. 13, 1960, Public Law 86–777, section 4, 74 Stat. 920.)

TITLE 50.—WAR AND NATIONAL DEFENSE, APPENDIX

WORLD WAR II LICENSE AGREEMENTS

50 U. S. C. Appendix 2371. Modification or cancellation of certain license agreements granted Government during World War II. Notwithstanding any other provision of law, the head of any department or other agency in the executive branch of the Government which subsequent to September 9, 1939, entered into any contract or agreement with the holder of any privately owned patent or any right thereunder whereby such holder granted to the United States, without payment of royalty or with reduction or limitation of royalty, any license under such patent or right, is authorized, upon application of the grantor of such license, to enter into such supplemental contract or agreement for the cancellation of the contract or agreement by which such license was granted as the head of such department or agency shall deem to be warranted by equities existing

by reason of changes in circumstances occurring since the granting of such license. (Aug. 16, 1950, ch. 716, 64 Stat. 448.)

District of Columbia Code

TITLE 28—COMMERCIAL INSTRUMENTS AND TRANSACTIONS

Chapter 27, Subchapter I—Business Holidays

Section 28–2701. Holidays designated—Time for performing acts extended. The following days in each year, namely the first day of January, commonly called New Year's Day; the twenty-second day of February, known as Washington's Birthday; the Fourth of July; the thirtieth day of May, commonly called Decoration Day; the first Monday in September, known as Labor Day; the twenty-fifth day of December, commonly called Christmas Day; every Saturday, after twelve o'clock noon; any day appointed or recommended by the President of the United States as a day of public feasting or thanksgiving, and the day of the inauguration of the President, in every fourth year are holidays in the District for all purposes. When a day set apart as a legal holiday falls on Sunday the next succeeding day is a holiday. In such cases, and when a Sunday and a holiday fall on successive days, all commercial paper falling due on any of those days shall, for all purposes of presenting for payment or acceptance, be deemed to mature and be presentable for payment or acceptance on the next secular business day succeeding. Every Saturday is a holiday in the District for (1) every bank or banking institution having an office or banking house located within the District, (2) every Federal savings and loan association whose main office is in the District, and (3) every building association, building and loan association, or savings and loan association, incorporated or unincorporated, organized and operating under the laws of and having an office located within the District. An act which would otherwise be required, authorized, or permitted to be performed on Saturday in the District at the office or banking house of, or by, any such bank or bank institution, Federal savings and loan association, building association, building and loan association, or savings and loan association, if Saturday were not a holiday, shall or may be so performed on the next succeeding business day, and liability or loss of rights of any kind may not result from such delay.

Other Sections

References to patents are to be found in a number of other sections of the United States Code, including the following:

Title 5.—Executive Departments and Government Officers and Employees.

Chapter 10.—Department of Commerce. Section 597. Bureaus in Department. 10.—The Patent Office.

Chapter 21.—Classification of Civilian Positions. Section 1161. Establishment of positions. (Provides in subsection (d) that the Secretary of Commerce is authorized to establish and fix the compensation for not more than thirty scientific or professional positions in the Department of Commerce, of which not less than five shall be for the U.S. Patent Office in its examining and related activities.)

Chapter 29.—Federal Executives Pay Provisions. Section 2211. Federal Executive Salary Schedule. (e)(48) Commissioner of Patents, Department of Commerce, salary $26,000 per annum.

Title 10.—Armed Forces.

Chapter 57.—Cash awards for suggestions, inventions, or scientific achievements. Section 1124.

Chapter 135.—Encouragement of Aviation. Section 2273. Right of United States to design; right of designer to patent; right to sue United States.

Chapter 141.—Miscellaneous Procurement Provisions. Section 2386. Copyrights, patents, designs, etc.; acquisition.

Chapter 513.—Bureaus; Office of the Judge Advocate General; Office of Naval Research. Section 5151. Office of Naval Research; duties.

Chapter 631.—Secretary of the Navy: Miscellaneous Powers and Duties. Section 7210. Purchase of patents, patent applications, and licenses.

Title 15.—Commerce and Trade.

Section 638. Research and Development. Provides for assistance to small-business concerns. Authorizes Administrator of Small Business Administration to encourage joint programs among business concerns, which, among other things, include as a purpose—to prosecute applications for patents and render patent services for participating members; and to negotiate and grant licenses under patents held under the joint program, and to establish corporations designed to exploit particular patents obtained by it.

Title 20.—Education.

Section 91. Literary and scientific collections accessible to investigators and students. (Provides that facilities of Patent Office shall be available.)

Title 22.—Foreign Relations and Intercourse.

Section 269f. International Bureau for Protection of Industrial Property; appropriation. Authorizes appropriation to the Department of State of such sums, not to exceed $15,000 annually, as may be required for the payment by the United States of its proportionate share of the expenses of the international bureau.

Section 526. Protection of patent rights. Secretary of the Army and Secretary of the Navy required to protect patent rights of U.S. citizens in making contracts for material for use in promoting inter-American relations and aiding American Republics with their military and naval establishments.

Section 2356. International Peace and Security. Patents and technical information. (a) Practice of invention or disclosure of information; suits against United States for reasonable compensation; jurisdiction; limitation of action; defenses. (b) Settlement of claims. (c) Drug products manufactured outside the United States.

Section 2572. Arms Control and Disarmament. Patents resulting from research under a contract to be available to the general public; owner of patent protected with respect to background rights.

Title 23.—Highways.

Section 307. Research and planning. (Secretary of Commerce authorized to assist in the testing of any material, invention, patented article, or process.)

Title 26.—Internal Revenue Code.

Section 862. Income from sources without the United States. (Royalties for the use of or for the privilege of using without the United States patents, copyrights, trademarks, to be treated as gross income.)

Section 905. Foreign tax credit on income from royalties on patents, copyrights, trademarks, and other like property.

Section 1235. Special rules for determining capital gains and losses. Sale or exchange of patents.

Section 1342. Computation of tax where taxpayer recovers substantial amount held by another under claim of right; as a result of a court decision in a patent infringement suit.

Title 30.—Mineral Lands and Mining.

Chapter 18.—Coal Research and Development.

Section 666. Public-availability requirement; national defense; patent agreements. (Provides that all information, patents, etc. resulting from research will be available to the general public.)

Title 31.—Money and Finance.

Section 72. Public accounts to be settled in General Accounting Office. General Accounting Office authorized to receive and examine all accounts of salaries and expenses of the Patent Office.

Section 725e. Permanent Appropriations Repeal Act provides effective July 1, 1935, that receipts theretofore authorized to be credited to the Patent Office appropriation account shall be deposited into the Treasury of the United States as miscellaneous receipts.

Section 725r. Effective July 1, 1935, moneys received as Patent Office fees shall be deposited in the Treasury of the United States to appropriately designated trust-fund receipt accounts and shall be available for refunds.

Title 33.—Navigation and Navigable Waters.

Section 725. Prohibition against officers and employees of the Coast Guard being interested in contracts for materials, etc. for the Lighthouse Service, or in any patent, plan, etc.

Title 40.—Public Buildings, Property and Works.

Chapter 10.—Management and Disposal of Government Property.

Subchapter II. Property Management. Section 488. Applicability of antitrust laws to property disposal (provides that section shall not apply to disposal of personal property (other than a patent, process, technique, or invention)).

Title 42.—The Public Health and Welfare.

Section 1953. Saline Water Research. Provides that the Secretary of the Interior may acquire inventions, patents, patent applications, etc.

Section 1954. Saline Water Research. Requires that all research shall be contracted for in such manner that all information, patents, and other developments resulting therefrom will be available to the general public, but shall not deprive an owner of any background patent or any rights he has thereunder.

Section 1961c–3. Water Resources Research Program. Availability to public of resulting information and developments a condition for expenditure of funds for scientific or technological research or development activity; background patent owner's rights.

Section 2293. Provides that the Atomic Energy Commission shall obtain from the European Atomic Energy Community (EURATOM) a royalty-free, non-exclusive, irrevocable license for governmental purposes to any patents on inventions made in the course of development of fuel elements.

Section 2473. Provides that the National Aeronautics and Space Administration shall acquire property (including patents) as deemed necessary.

Title 50.—War and National Defense.

Section 100. Nitrate plants. (Provides in paragraph (b) for acquisition of processes, patented or otherwise, necessary for construction and operation of plants and manufacture of products.)

Section 167a. Grants authority to the Secretary of the Interior to acquire patents or rights therein and reports of experimentation and research used in connection with properties acquired or useful in the Government's helium operations.

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LAWS NOT CODIFIED

1. Special Provisions for Conditions Arising from World War II: (Boykin Act). An Act To extend temporarily the time for filing applications for patents, for taking action in the United States Patent Office with respect thereto, for preventing proof of acts abroad with respect to the making of an invention, and for other purposes. (Public Law 690, 79th Cong., 2d sess., ch. 910, approved Aug. 8, 1946; 60 Stat. 940.)

SECTION 1. The rights of priority provided by section 4887 of the Revised Statutes (U. S. C., title 35, sec. 32), as amended, for the filing of applications for patent for inventions, discoveries, and designs, which rights had not expired on the 8th day of September 1939, or which rights have arisen since the 8th day of September 1939, shall be, and the same are hereby, extended until the expiration of a period of twelve months from the passage of this Act in favor of the citizens of the United States and of citizens or subjects of all countries which have extended, or which now extend or which within said period of twelve months, shall extend substantially reciprocal privileges to citizens of the United States, and such extension shall apply to applications upon which patents have been granted, as well as to applications now pending or filed within the period specified herein: *Provided*, That no such extension shall apply to any patent unless a request in writing was made therefor during the pendency of the application for such patent in the United States Patent Office, or within twelve months after the passage of this Act, which request must be accompanied by (1) a copy of the original foreign application, certified to by the patent office of the country in which it was filed, but if the original foreign application has been destroyed, other evidence pertaining thereto may be accepted; (2) a sworn translation of the same if it is not in the English language; and (3) if the foreign application was not made by the inventor himself, an affidavit by the applicant or patentee stating that such application was filed for his benefit or on his behalf and that such procedure is in accordance with the procedure in the foreign country: *Provided further*, That no patent granted or validated by reason of any such extension shall in any way furnish a basis of claim against the Government of the United States: *Provided further*, That such extension shall in no way abridge or otherwise affect the right of the United States, or of any person, firm, association, company, or corporation, who, before the passage of this Act was bona fide in possession of any rights in or under patents or applications for patents conflicting with

rights in patents granted or validated by reason of such extensions to exercise such rights by itself or himself personally, or by such agents, or licensees as derived their rights from it or him before the passage of this Act, to the extent that they shall not be amenable to any action for infringement of any patent granted or validated by reason of such extension.

A patent shall not be refused on an application coming within the provisions of this section, nor shall a patent granted on such application be held invalid, by reason of the invention having been patented or described in any printed publication or in public use or on sale in the United States more than one year prior to the filing of the application in the United States, unless such patent or publication or such public use or sale was prior to the filing of the foreign application upon which the right of priority is based.

Sec. 2. Whenever, prior to the 8th day of April 1946, an invention, discovery, or a design has been communicated in writing or embodied in any article supplied to the Government of the United States or to any person, firm, or corporation in the United States at the request of said Government, pursuant to and by reason of an agreement or arrangement between the Government of the United States and the government of a foreign country for the supply or mutual exchange of information or articles for use for national defense purposes during the periods of the national emergencies declared by the President of the United States preceding World War II, or for use for war purposes during World War II—

(a) A patent based on an application filed by the inventor of the invention, discovery, or design so communicated or supplied shall not be refused or held invalid merely because of the fact that the invention, discovery, or design had been in public use or on sale in the United States, or described in a printed publication, if such public use or sale or publication was in consequence of and attributable to the communication or supply and subsequent to the date of the communication or supply; and

(b) For use in any action in a United States court or proceeding in the Patent Office involving a patent for an invention, discovery, or a design, or involving an application for patent for an invention, discovery, or a design so communicated or supplied any court of the United States for any district or Territory thereof, and the Commissioner of Patents shall have the power to call upon any department or agency of the Government of the United States to produce information or papers in its possession relating to the communication or supply or relating to the further communication of the invention, discovery, or design by said department or agency to any person, firm, or corporation in the United States: *Provided, however,* That the head of any department or agency may refuse and omit to comply with any call for information or papers when in his opinion such compliance would jeopardize the national defense.

No benefit under section 2 of this Act shall be extended to any person unless (1) an application for patent for the same invention, discovery, or design which was communicated or supplied as aforesaid is filed in the

United States Patent Office prior to the expiration of twelve months from the date of this Act; and (2) unless sufficient information in writing and under oath as to what was communicated or supplied, the date thereof and to whom made, is furnished to the Commissioner of Patents by the owner of such application while it is pending, or prior to the expiration of twelve months from the date of this Act to enable him to judge of the identity of the invention so communicated or supplied with the invention claimed in such application, which information shall be made a part of the record of such application and shall have no evidentiary value as proof of of the facts stated therein; and (3) unless the country of which such person is a national extends substantially reciprocal privileges to citizens of the United States.

SEC. 3. That whenever it shall be shown to the satisfaction of the Commissioner of Patents that the time now fixed by law for the payment of any fee, or for the taking of any other action, with respect to an application for patent for an invention, discovery, or design has lapsed because of conditions growing out of World War II, which time had not expired on the 8th day of September 1939, or which commenced after the 8th day of September 1939, such time may be extended by the Commissioner to a date not later than twelve months after the passage of this Act, without the payment of extension fees or other penalty, in favor of citizens of the United States and the citizens or subjects of countries which have extended, now extend, or shall extend prior to the expiration of twelve months after the passage of this Act substantially reciprocal privileges to citizens of the United States: *Provided*, That no extension herein shall confer such privileges upon the citizens or subjects of a foreign country for a longer term than the term during which such privileges are conferred by such foreign country upon the citizens of the United States, but nothing in this Act shall give any right to reopen interference proceedings where final hearing before the Examiner of Interferences or the Board of Interference Examiners has taken place.

SEC. 4. That no patent granted or validated by reason of any extension of time provided for by sections 1 and 3 of this Act shall abridge or otherwise affect the right of the United States, or of any person, firm, association, company, or corporation, or agent or agents, or his successor in business, to continue or to resume any manufacture, use, or sale bona fide commenced by it or him in the United States before the passage of this Act, or, in the case of an application claiming the benefits of section 3 hereof, commenced by it or him before the taking of action or the payment of any fee under that section if such action or payment was later than the passage of this Act, nor shall the further manufacture, use, or sale by it or him, or its or his agents or successors in business or the use or sale of the devices resulting from such manufacture or use constitute an infringement: *Provided*, That the benefits of this section shall not apply to the manufacture, use, or sale as aforesaid if and to the extent that it is based upon or attributable to a communication of the invention, discovery, or design so manufactured, used, or sold to

the United States or to any person, firm, or corporation in the United States at the request of said Government under an agreement or arrangement between the Government of the United States and the government of another country for the supply or mutual exchange of information or articles for use for national defense purposes during the periods of the national emergencies declared by the President of the United States preceding World War II, or for use for war purposes during World War II.

Sec. 5. Notwithstanding the provisions of sections 4885 and 4887 of the Revised Statutes (U. S. C., title 35, secs. 41 and 32, respectively) no patent issued subsequent to July 17, 1945, which was scheduled for issue on that date, or on July 24, July 31, or August 7, 1945, shall be held invalid because of the deferment of the issuance of such patent due to the failure to issue patents on July 17 and July 24, 1945.

Sec. 6. Notwithstanding the provisions of the Act of Congress approved July 1, 1940 (54 Stat. 710; U. S. C., title 35, sec. 42), as amended by the Act approved August 21, 1941 (55 Stat. 657; U. S. C., title 35, secs. 42a–42f), and as further amended by the Act of June 16, 1942 (56 Stat. 370), no person shall be debarred from receiving a patent for an invention made in the United States, nor shall any patent issued for such invention be deemed or held invalid under said Act, merely because authorization to file an application for patent for such invention in any country foreign to the United States was not first obtained from the Commissioner of Patents: *Provided*, That the Commissioner subsequently authorized the filing of the application in such foreign country.

Sec. 7. That all applications for patents for inventions, discoveries, or designs officially accepted by the Patent Office and given a serial number and date of filing since the 8th day of September 1939, and prior to the passage of this Act, which were executed by an agent of the applicant, and in which a duplicate copy of the specification and a new petition and oath, all duly signed and executed by the inventor or his executor or administrator has been or shall have been filed within a period of twelve months from the approval of this Act, and the patents granted on such applications, shall have the same force and effect as if the papers signed and executed by the inventor, or his executor or administrator, had been filed on the date on which the papers signed by his agent were deposited in the United States Patent Office.

Sec. 8. That all applications for patents for inventions, discoveries, or designs filed since the 8th day of September 1939, in which the oath was executed before or authenticated by a consular officer, or other representative qualified to administer oaths, of a government acting in the interest of the Government of the United States, shall have the same force and effect as if said oath had been executed by the applicant before a consular officer of the United States.

Sec. 9. (Section 9 was repealed July 17, 1952, and replaced by 35 U. S. C. 104.)

Sec. 10. No patent for an invention or a discovery granted under the

provisions of section 1 or 3 of this Act shall extend for a longer term than twenty years from the filing date of the first application regularly filed in any country disclosing the same invention, and in no event for a period in excess of seventeen years from the date of the grant of such patent.

SEC. 11. No claims for patent infringement shall be made or action brought by or on behalf of or for the benefit of any country or a national of any country against which the United States has declared the existence of a state of war, in respect to any manufacture, use, or sale since September 8, 1939.

SEC. 12. That nothing in this Act shall affect any act which has been or shall be done by virtue of the special measures taken during World War II under legislative, executive, or administrative authority of the United States in regard to the rights of any enemy, or ally of an enemy, as defined by the Trading With the Enemy Act of October 6, 1917 (40 Stat. L. 411), as amended, in patents for inventions and designs.

SEC. 13. Section 10 (a) of the said Trading With the Enemy Act, relating to the filing and prosecution of applications for patents and the registration of trade-marks, prints, labels, and copyrights, by an enemy, or ally of an enemy, is hereby repealed.

SEC. 14. The benefits of this Act shall not extend in favor of inventions, applications, or patents made by or owned by citizens of any country with which the United States shall have been at war since the 8th day of September 1939. The Alien Property Custodian shall be entitled to the benefits of this Act.

SEC. 15. Nothing contained in this Act shall be effective to nullify any judicial finding upon the validity of any patent for an invention, discovery, or a design heretofore made by a court of competent jurisdiction.

SEC. 16. If any clause, sentence, paragraph, or part of this Act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operations to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

2. Further Extension of Time for Taking Actions Permitted by Boykin Act. An Act To extend temporarily the time for filing applications for patents and for taking action in the United States Patent Office with respect thereto. (Public Law 220, 80th Cong., 1st sess., ch. 302, approved July 23, 1947; 61 Stat. 413.)

The period of extension of priority rights under section 1 of Public Law 690, Seventy-ninth Congress, approved August 8, 1946, and the time for the payment of any fee or the taking of any other action under section 3 of said Act, specified as expiring twelve months after the passage of that Act, shall be further extended to a date not later than February 29, 1948,

in favor of citizens of the United States and citizens or subjects of countries which grant or shall grant before February 29, 1948, substantially reciprocal privileges to citizens of the United States for such extended term, subject to the provisions of said Public Law 690.

3. Peace Treaties; Patents to Germans and Japanese. An Act To carry into effect certain parts relating to patents of the treaties of peace with Italy, Bulgaria, Hungary, and Rumania, ratified by the Senate on June 5, 1947, and for other purposes. (Public Law 380, 80th Cong., 1st sess., ch. 511, approved Aug. 6, 1947; 61 Stat. 794.)

SECTION 1. The International Convention for the Protection of Industrial Property of 1883, as amended, is considered as reestablished and in full force and effect between the United States and Italy, Bulgaria, Hungary, and Rumania from the date of this Act and the nationals of the latter countries may hereafter apply for and obtain patents in the United States for their inventions and enjoy the rights and privileges thereof as provided in article 2 of said convention: *Provided, however,* That patents shall not be applied for or obtained, or if obtained, shall not be valid, for inventions heretofore made relating to war material as specified in article 6 of annex XV A of the Treaty of Peace with Italy, article 6 of annex IV of the Treaty of Peace with Bulgaria, article 6 of annex IV A of the Treaty of Peace with Hungary, and article 6 of annex IV A of the Treaty of Peace with Rumania.

SEC. 2. The rights of priority and the times for the taking of any action specified in sections 1 and 3 of Public Law 690, Seventy-ninth Congress, approved August 8, 1946, which had not expired on December 8, 1941, or which commenced after such date, shall be and are hereby extended until February 29, 1948, in favor of nationals of Italy, Bulgaria, Hungary, and Rumania, subject to the conditions and limitations specified in sections 1, 3, 4, and 10 of said Public Law 690: *Provided, however,* That nothing in this Act shall affect any act which has been or shall be done by virtue of special measures taken under legislative, executive, administrative, or military authority of the United States during World War II.

SEC. 3. Nationals of Germany and Japan may hereafter apply for and obtain patents in the United States for their inventions in accordance with the patent laws and enjoy the rights and privileges thereof: *Provided, however,* That patents obtained for such inventions shall be subject to any conditions and limitations with respect to duration, revocation, utilization, assignment, and licensing which may be imposed by Congress, or by the President in accordance with the provisions of any peace treaty hereafter entered into with Germany or Japan: *And provided further,* That, except for patents based on applications filed in the United States Patent Office prior to the date of enactment of this Act, patents may not be applied for or obtained, or if obtained, shall not be valid, for any invention made, or upon which an application was filed by any such national, before January 1,

1946, in Germany or Japan or in the territory of any other of the Axis Powers or in any territory occupied by the Axis forces.

4. Extension of Boykin Act to Germans and Japanese. An Act to extend temporarily the rights of priority of nationals of Japan and certain nationals of Germany with respect to applications for patents. (Public Law 619, 83d Cong., 2d sess., ch. 823, approved August 23, 1954, 68 Stat. 764.)

The rights of priority specified in section 1 of Public Law 690, Seventy-ninth Congress, approved August 8, 1946 (60 Stat. 940), which arose before April 1, 1950, are hereby extended, with respect to inventions made subsequent to January 1, 1946, in favor of nationals of Japan, and of nationals of Germany, excluding persons residing in or subject to the jurisdiction of the zone of Germany occupied by the Union of Soviet Socialist Republics, the Soviet sector of Berlin or other areas of Germany under Soviet or Polish administration, to a date nine months after the enactment of this Act, subject to the conditions and limitations specified in sections 1, 4, 10, 12, and 15 of said Public Law 690.

For the purpose of this Act, the phrase "passage of this Act" in said Public Law 690 shall be understood to refer to the date of enactment of the present Act.

5. The Veterans Patent Extension Act. Public Law 598, 81st Cong., 2d sess., ch. 444, approved June 30, 1950; 64 Stat. 316, amended by Public Law 437, 82d Cong., 2d sess., ch. 540, approved July 1, 1952; 66 Stat. 321, is omitted from this edition of the Patent Laws pamphlet, because the time for taking action under all provisions of the Act expired January 1, 1953. It was published in the January 1, 1955, edition, and may be found in the Statutes at Large.

6. The Royalty Adjustment Act. Public Law 768, 77th Cong., 2d sess., ch. 634, approved Oct. 31, 1942, 56 Stat. 1013, amended by sec. 54 of Public Law 248, 82d Cong., 1st sess., ch. 655, approved Oct. 31, 1951, 65 Stat. 710, is omitted from this edition of the Patent Laws pamphlet, since this initially was World War II temporary legislation. This law, and an explanation of the continuation of its effectiveness for a certain time, was printed in the January 1, 1955, edition of the Patent Laws pamphlet.

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